RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

(Effective November 1, 1980, as amended to January 23, 2000)

TITLE I—SCOPE OF RULES—ONE FORM OF ACTION

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Rule 1. Scope of Rules

These rules govern the procedure in the United States Court of International Trade. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. When a procedural question arises which is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules shall not be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 2. One Form of Action

There shall be one form of action to be known as a ''civil action.'' [1]

TITLE II—COMMENCEMENT OF ACTION; AMENDMENT OF SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. Commencement of Action

(a) Commencement. A civil action is commenced by filing with the clerk of the court:

(1) A summons in an action described in 28 U.S.C. §1581(a) or (b);

(2) A summons, and within 30 days thereafter a complaint, in an action described in 28 U.S.C. §1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; or

(3) A summons and complaint concurrently in all other actions.

(b) Filing Fee. When an action is commenced, a $150 filing fee shall be paid to the clerk of the court, except that

(1) a $120 filing fee shall be paid when the action is one described in 28 U.S.C. §1581(a), and

(2) a $25 filing fee shall be paid when the action is one described in 28 U.S.C. §1581(d)(1).

(c) Complaint Fee. When a complaint is filed in an action described in 28 U.S.C. §1581(a), a $30 fee shall be paid to the clerk of the court.

(d) Information Statement. When an action is commenced, the party commencing the action shall file the original and one copy of a completed Information Statement on the form shown in Form 5 in the Appendix of Forms.

(e) Amendment of Summons. The court may allow a summons to be amended at any time, in its discretion and upon such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.

(f) Notice to Interested Parties. In an action described in 28 U.S.C. §1581(c), the plaintiff, as provided in section 516A(d) of the Tariff Act of 1930, shall notify every interested party who was a party to the administrative proceeding of the commencement of the action, by mailing a copy of the summons at the time the action is commenced, or promptly thereafter, by certified or registered mail, return receipt requested, to each such party at the address last known in the administrative proceeding.

Upon filing of a complaint in an action described in 28 U.S.C. §1581(c), the plaintiff shall promptly serve a copy of the complaint, by certified or registered mail, return receipt requested, on every interested party who was a party to the administrative proceeding at the address last known in that proceeding.

(g) Precedence of Action. Unless the court, upon motion for good cause or upon its own initiative, determines otherwise in a particular action, the following actions shall be given precedence, in the following order, over other actions pending before the court, and expedited in every way:

(1) An action seeking temporary or preliminary injunctive relief;

(2) An action involving the exclusion of perishable merchandise or the redelivery of such merchandise;

(3) An action described in 28 U.S.C. §1581(c) to contest a determination under section 516A of the Tariff Act of 1930;

(4) An action described in 28 U.S.C. §1581(a) to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930, involving the exclusion or redelivery of merchandise;

(5) An action described in 28 U.S.C. §1581(b) to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930.

(h) Special Rule for Actions Described in 28 U.S.C. §1581(c). When an action is commenced under 28 U.S.C. §1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930 by the administering authority and such a determination by the Commission, a party shall file a separate summons and complaint with respect to each agency.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; May 27, 1998, eff. Sept. 1, 1998.)

[1] Designation of Certain Pre-October 1, 1970 Actions. The following designations shall apply to actions arising prior to October 1, 1970: (1) Appeal for Reappraisement: An action arising pursuant to section 501 or 516(a) of the Tariff Act of 1930 [19 U.S.C. 1501 or 1516], as effective prior to October 1, 1970, and forwarded to the court pursuant to section 501 or 516(c) of said Act, shall be known as an appeal for reappraisement. (2) Protest: An action arising pursuant to section 514 or 516(b) of the Tariff Act of 1930 [19 U.S.C. 1514 or 1516], as effective prior to October 1, 1970, and forwarded to the court pursuant to section 515 or 516(c) of that Act [19 U.S.C. 1515 or 1516] shall be known as a protest.

PRACTICE COMMENT

For the appropriate summons form and number of copies to be filed, refer to Forms 1 to 4 of the Appendix of Forms. Information Statement forms, as shown in Form 5, are available upon request from the office of the clerk.

As prescribed by Rule 5(e), a summons or a summons and complaint may be filed by delivery or by mailing. The filing is completed when received, except that when the method of mailing prescribed by Rule 5(g) is used, the summons or summons and complaint are deemed filed as of the date of mailing.

To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. §455, a completed ''Disclosure Statement'' form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors, or *amicus curiae*. A copy of the ''Disclosure Statement'' form is shown in Form 13 of the Appendix of Forms.

Internal inconsistencies exist within the provisions of the Customs Courts Act of 1980 with respect to the method of commencing two kinds of actions. The two kinds are described in 28 U.S.C. §1581(d), adjustment assistance actions, and 28 U.S.C. §1581(g), customhouse broker license actions. Both of these are included among those actions which are, pursuant to 28 U.S.C. §2632(a), to be commenced by filing concurrently a summons and complaint with the clerk of the court as prescribed by the rules of the court. The rules of the court require the plaintiff to cause concurrent service of the summons and complaint to be made. (See Rules 3(a) and 4(b)).

The inconsistency pertaining to adjustment assistance actions appears in 19 U.S.C. §2395, which requires the clerk of the court, instead of the plaintiff, to serve a copy of the summons and complaint upon the Secretary of Labor or Secretary of Commerce as the case may be. The inconsistency pertaining to customhouse broker license actions appears in 19 U.S.C. §1641(b), which provides that an action is commenced by filing ''a written petition'' in the court and further provides that a copy of the petition is to be ''transmitted by the clerk of the court to the Secretary of the Treasury. . . .''

Until such time as the matter is resolved, the preferred procedure to achieve uniformity and consistency and to minimize the ambiguity created by these inconsistent statutory provisions is to follow the provisions in Title 28. (In one unreported case, *James A. Barnhart v. United States*, Court No. 81–3–00328, the court directed plaintiff to comply with the requirements of 28 U.S.C. §2632(a) by filing a summons and complaint notwithstanding the fact that plaintiff had complied with the requirements of 19 U.S.C. §1641(b) by filing a petition.)

As provided in Section 516A(a)(2) and (3) of the Tariff Act of 1930, a complaint shall be filed within 30 days after the filing of the summons. *See Georgetown Steel v. United States*, 801 F.2d 1308 (Fed. Cir. 1986).

Nevertheless, counsel are encouraged to commence any action described in Section 516A(a)(2) or (3) of the Tariff Act of 1930 and 28 U.S.C. §1581(c) by the concurrent filing of a summons and complaint. This will serve to expedite the prosecution of the action.

When an action is commenced, counsel should contact the Clerk's Office not more than 24 hours prior to filing to obtain a court number and shall endorse that court number on the summons and complaint. Counsel for plaintiff shall be responsible for service of the summons and complaint as prescribed in Rules 4(b), (c), (d) and (e). Under these circumstances, the clerk of the court will not make service of the summons as prescribed in Rule 4(a)(4).

Although this rule requires that the two agencies subject to suit under 28 U.S.C. §1581(c) are in the first instance the subject of separate summonses and complaints, it does not prohibit consolidation of actions against the two agencies upon an adequate showing of grounds for consolidation.

REFERENCES IN TEXT

Sections 515, 516, and 516A of the Tariff Act of 1930, referred to in subds. (a)(2), (e), (f)(3) to (5), and (h), are classified to sections 1515, 1516, 1516a, respectively, of Title 19, Customs Duties.

Rule 3.1. Actions Transferred to the Court of International Trade from a Binational Panel or Committee Pursuant to 19 U.S.C. §1516a(g)(12)(B) or (D)

(a) Filing of Request for Transfer.

(1) A copy of the request for transfer to the court under 19 U.S.C. §1516a(g)(12)(B) or (D) shall be filed with the clerk of the court simultaneously with the filing of the request for transfer with the United States Secretary (as defined in 19 U.S.C. §1516a(f)(6)).

(2) When the filing of the request for transfer is made by mail, the mailing shall be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(b) Notice to Interested Parties. On the same day as the filing of a request for transfer, the party requesting transfer shall serve a copy of the request, by certified or registered mail, return receipt requested, upon every interested party who was a party to the panel or committee review, except if the time period for filing the Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, then service shall be upon every interested party who was a party to the administrative proceeding.

(c) Intervention of Right.

(1) In an action transferred to the court under 19 U.S.C. §1516a(g)(12), any person who filed a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 shall be deemed an intervenor in the action if otherwise entitled to intervene as of right under Rule 24 of these rules.

(2) In an action transferred to the court under 19 U.S.C. §1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules shall be permitted to intervene. A motion to intervene shall be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 10 days after the date of filing of the request for transfer, whichever is later. Any time periods in which the panel or committee proceedings were stayed shall not be counted in computing the time for filing a motion to intervene.

(d) Documents in an Action Transferred Under 19 U.S.C. §1516a(g)(12).

(1) Within 30 days after the date of filing of the request for transfer, the United States Sec-

retary shall transfer to the clerk of the court copies of all documents filed in the binational panel review or extraordinary challenge committee review and of all orders and decisions issued by the panel or committee.

(2) If the request for transfer is filed before the Record for Review under NAFTA Article 1904 Panel Rule 41 is filed, the administering authority or the International Trade Commission shall, within 40 days after the date of filing of the request for transfer, file with the clerk of the court the items described in either subdivision (a) or (b) of Rule 71 of these rules.

(3) The transfer and filing of documents under paragraphs (1) and (2) of this subdivision (d) shall be in accordance with subdivision (c) of Rule 71 of these rules. Any documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 or NAFTA Extraordinary Challenge Committee Rule 30 shall be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested.

(e) Pleadings. Notwithstanding Rule 7(a) of these rules, in an action transferred to the court under 19 U.S.C. §1516a(g)(12) in which the plaintiff has filed a complaint under NAFTA Article 1904 Panel Rule 39, the plaintiff shall not file a new complaint in the action before the court, except that

(1) if the time for amending a complaint in the panel proceedings had not expired or was stayed prior to the filing of the request for transfer, the plaintiff may file an amended complaint within the additional time that remained for filing an amended complaint in the panel proceedings, and

(2) in all actions, the plaintiff may amend the complaint within 10 days of the date of filing of the request for transfer to allege counts or requests for relief that could not have been alleged before the panel.

(f) Additional Provisions Governing Judgment Upon an Agency Record.

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules shall govern actions transferred under 19 U.S.C. §1516a(g)(12).

(2) In an action transferred to the court under 19 U.S.C. §1516a(g)(12) in which a complaint was filed under NAFTA Article 1904 Panel Rule 39, any proposed judicial protective order shall be filed within 21 days after the date of filing of the request for transfer. The procedure for filing the proposed judicial protective order shall be in accordance with Rule 56.2(a) of these rules.

(3) In an action transferred to the court under 19 U.S.C. §1516a(g)(12), the proposed briefing schedule filed under Rule 56.2(a) of these rules shall indicate whether briefs were filed in the panel or extraordinary challenge committee proceedings.

(A) If briefs were filed in the panel or extraordinary challenge committee proceedings, the proposed briefing schedule shall indicate whether the parties (i) agree that those briefs should be deemed the equivalent of the motion and briefs provided for in Rule 56.2(d) of these rules, (ii) see any reason for the filing of additional briefs, and (iii) agree to time periods for filing any additional briefs.

(B) If briefs were not filed in the panel or extraordinary challenge proceedings, or if the briefs were filed but the parties agree that new briefs should be filed in the court, the proposed briefing schedule shall indicate whether the parties (i) agree to the time periods set forth in Rule 56.2(d) of these rules, (ii) agree to time periods other than the periods set forth in Rule 56.2(d) of these rules, or (iii) cannot agree upon a time period. If the parties agree that new briefs should be filed, the proposed briefing schedule shall indicate the parties' views as to whether any briefs originally submitted to the panel or extraordinary challenge committee should be stricken from the record.

In the event the parties cannot agree upon any of the matters covered by subparagraphs (A) and (B), the parties shall indicate the areas of disagreement and shall set forth the reasons for their respective positions.

(g) Applicability of Other Court Rules. Unless a provision of this rule or an order of the court otherwise provides, the rules of this court shall govern actions transferred under 19 U.S.C. §1516a(g)(12).

(Added Nov. 29, 1995, eff. Mar. 31, 1996.)

Rule 4. Service of Summons and Complaint

(a) Summons—Service by the Clerk. In any action required to be commenced by filing a summons only, service of the summons shall be made by the clerk of the court as follows:

(1) Upon the United States, by serving the Attorney General of the United States, by delivering or by mailing a copy of the summons to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) When the action is described in 28 U.S.C. §1581(a) or (b), the clerk shall, in addition to the service prescribed by paragraph (1) of this subdivision (a), also serve the Secretary of the Treasury by mailing a copy of the summons to the district director for the customs district in which the protest was denied or in which the liquidation of an entry is contested and to the Assistant Chief Counsel for International Trade Litigation, United States Customs Service.

(3) When the action is described in 28 U.S.C. §1581(b), the clerk shall, in addition to the service prescribed in paragraphs (1) and (2) of this subdivision (a), also mail a copy of the summons to the consignee or agent of the consignee involved in each entry included in the action.

(4) When the action is described in 28 U.S.C. §1581(c) and contests a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the clerk shall, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) After making service as prescribed in this subdivision (a), the clerk shall return a copy of

the summons, together with proof of service and a receipt for payment of the filing fee, to the person who filed the summons.

(b) Summons and Complaint—Service by Plaintiff. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff shall cause service of the summons and complaint to be made in accordance with this rule.

(c) Service.

(1) Service of a summons and complaint may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915.

(2) In an action commenced under 28 U.S.C. §1581(d), the court is authorized to serve the summons and complaint where the action was commenced *pro se* and the plaintiff has failed to make service.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint;

(D) shall inform the defendant, by means of a text substantially in the form as set forth in Forms 1A and 1B of the Appendix of Forms, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals Within a Judicial District of the United States. Unless otherwise provided by federal law, service upon an individual other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the state; or

(2) by delivering a copy of the summons and complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service upon an infant or an incompetent person in a judicial district of the United States shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be efected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) Service upon an officer or agency of the United States shall be effected by serving the United States, and by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subdivision (h).

(j) Service Upon Foreign State or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. §1608.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which service is made, or

(B) who is a party joined under USCIT R. 14 or 19 and is served at a place within a judicial district of the United States, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. §1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(*l*) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit For Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

PRACTICE COMMENT

The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. §1581(a) or (b), and only those actions described in 28 U.S.C. §1581

(c) which contest a determination listed in section 516A(a)(2) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. §1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

REFERENCES IN TEXT

Section 516A of the Tariff Act of 1930, referred to in subd. (a)(4), is classified to section 1516a of Title 19, Customs Duties.

Rule 4.1. Service Of Other Process.

Process other than a summons as provided in USCIT R. 4 or subpoena as provided in USCIT R. 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in USCIT R. 4(*l*).

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service—When Required. Unless otherwise prescribed by these rules, or by order of the court, every pleading and other paper shall be served upon each of the parties.

(b) Service—How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon the party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery is made by: handing a copy to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Service—Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleadings and service thereof upon the plaintiff constitute due notice of it to the parties. A copy of every order shall be served upon the parties in such manner and form as the court directs.

(d) Filing—When Required. All pleadings and other papers required to be served upon a party shall be filed with the court immediately after service, unless otherwise prescribed by these rules, or by order of the court. Depositions upon oral examinations and interrogatories, requests for documents, requests for admission, other discovery documents, and answers and responses thereto shall not be filed unless by order of the court on motion or on its own initiative, or for use in the proceeding.

(e) Filing—How Made. The filing of pleadings and other papers with the court shall be made by filing them with the clerk of the court, except that the judge to whom an action is assigned, or a matter is referred, may permit pleadings and other papers pertaining thereto to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing with the clerk of the court shall be made by delivery or by mailing to: The Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278–0001; or by delivery to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place. Filing is completed when received, except that a pleading or other paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of mailing.

(f) Filing of Summons and Complaint by Mail. When an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail as prescribed by these rules, the mailing shall be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(g) Proof of Service. Unless otherwise prescribed by these rules, or by order of the court, papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the paper filed. The clerk may, for good cause shown, permit papers to be filed without acknowledgment or proof of service but shall require proof to be filed promptly thereafter.

(h) Filings Containing Business Proprietary Information in an Action Described in 28 U.S.C. §1581(c). In an action described in 28 U.S.C. §1581(c), a pleading, motion, brief or other paper containing business proprietary information shall identify that information by enclosing it in brackets. A party shall file and serve a pleading, motion, brief or other paper in accordance with any deadline established by these rules or by order of the court. A non-confidential version in which the business proprietary information is deleted shall accompany a confidential version of a pleading, motion, brief or other paper. However, when the original pleading, motion, brief or other paper includes the statement ''Bracketing of Business Proprietary Information not Final for One Business Day after Date of Filing'' on the cover of every document containing business proprietary information and on each page containing business proprietary information,

then a party may file and serve the non-confidential version within one day of the filing of that pleading, motion, brief or other paper, together with a complete revision of the original filing, if necessary, that is identical to the original in all respects except for any bracketing corrections. When the original states that the bracketing is not final for one business day after the date of filing, recipients of the document may not, until the bracketing is finalized, disclose the contents of the document to anyone not authorized to receive business proprietary information in the action.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; May 27, 1998, eff. Sept. 1, 1998.)

PRACTICE COMMENT

When the clerk concludes that exigencies so require, the clerk may permit a pleading or paper to be filed by facsimile transmission or similar process. Service by such process may be made with the consent of the party to be served. Certified or registered mail, return receipt requested, must be used, as prescribed in Rule 5(f), when an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail.

When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

When service is to be made upon a party represented by an attorney, service shall be made upon the attorney of record, unless otherwise ordered by the court.

When proof of service is made in the form of a statement, as prescribed in Rule 5(h), and the person served is an attorney, the statement shall identify the name of the party represented by the attorney served.

Rule 5(e) of the Federal Rules of Civil Procedure provides that ''the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.'' By contrast USCIT Rule 5 contains no such limitation. Instead, the responsibilities and limitations of the Clerk of the United States Court of International Trade with respect to the acceptance or rejection of a paper submitted for filing are contained in USCIT Rule 82(d), which has no counterpart within the Federal Rules of Civil Procedure.

Rule 5(h) applies a ''one day lag rule'' to a submission containing business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by order of the court. Its only effect on the timing of a submission is to provide one day for a party to prepare a non-confidential version of its submission and to prepare any correction in the bracketing of business proprietary information. In making special provision for filings in an action brought under 28 U.S.C. §1581(c), this rule likewise does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday,[1] or when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension.

(1) When by these rules or by a notice given thereunder or by order of the court, an act is required or allowed to be done at or within a specified time, the court may upon motion, for good cause shown, order the period extended; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(2) The motion for extension of time must set forth the specific number of additional days requested, the date to which the extension is to run, the extent to which the time for the performance of the particular act has been previously extended, and the reason or reasons upon which the motion is based. The motion shall be filed prior to the expiration of the period allowed for the performance of the act to which the motion relates (including any previous extension of time); except, when for good cause shown, the delay in filing was the result of excusable neglect or circumstances beyond the control of the party.

(3) No disposition shall be made until the court acts upon the motion for extension of time.

(c) Additional Time After Service by Mail. Whenever a party has the right or obligation to do some act or take some proceeding within a prescribed or allowed period after the service of a pleading, motion, or other paper upon the party, and the service is made by mail, 5 days shall be added to the prescribed or allowed period.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991.)

TITLE III—PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed—Consultation—Oral Argument—Response Time—Show Cause Order—Form of Motions

(a) Pleadings. There shall be a complaint and, except for an action described in 28 U.S.C. §1581(c), an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not

[1] As used in these rules, ''legal holiday'' includes: New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and any other day designated as a holiday by the President or the Congress of the United States.

an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions—Consultation. Before a motion for an extension of time as prescribed in Rule 6(b), a motion for intervention as prescribed in Rule 24(a), a motion for a preliminary injunction to enjoin the liquidation of entries or a motion for a judicial protective order as prescribed in Rule 56.2(a), a motion for a hearing as prescribed in Rule 56.2(e), a motion for the designation of a test case or suspension as prescribed in Rule 84, or a motion for an order compelling discovery as prescribed in Rule 37(a), is made, the moving party shall consult with all other parties to the action to attempt to reach agreement, in good faith, on the issues involved in the motion. If the court finds that a party willfully refused to consult, or, having consulted, willfully refused to attempt to reach agreement in good faith, the court may impose such sanctions as it deems proper.

(c) Oral Argument. Upon motion of a party, or upon its own initiative, the court may direct oral argument on a motion at a time and place designated as prescribed in Rule 77(c). A motion for oral argument on a motion shall be filed no later than 20 days after service of the response to the motion, or 20 days after the expiration of the period of time allowed for service of a response.

(d) Time To Respond. Unless otherwise prescribed by these rules, or by order of the court, a response to a motion shall be served within 10 days after service of such motion, except that a response to a dispositive motion shall be served within 30 days after service of such motion. The moving party shall have 10 days after service of the response to a dispositive motion to serve a reply.

(e) Order To Show Cause. No order to show cause to bring on a motion shall be granted except upon a clear and specific showing by affidavit of good and specific reasons why procedure other than regular motion is necessary or why the time to respond should be shortened.

(f) Form of Motions and Other Papers.

(1) An application to the court for an order shall be by motion, properly designated, which, unless made during a hearing or trial, shall be in writing and shall state, with particularity, the grounds therefor. Motions which require consultation between counsel before being made as prescribed by subdivision (b) of this rule shall describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and shall also recite the date and time of such consultation, as well as the names of all persons participating. All motions shall set forth the relief or order sought, and shall be accompanied by a proposed order.

(2) The rules applicable to the captions, signing, and other matters of form of pleadings apply to all motions and other papers prescribed by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(g) Dispositive Motions Defined. Dispositive motions include: motions for judgment on the pleadings; motions for summary judgment; motions for judgment upon an agency record; motions to dismiss an action; and any other motion for a final determination of an action.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

When a party is seeking a preliminary injunction, counsel shall, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212–264–2971. When a preliminary injunction is sought in conjunction with the filing of a new action, counsel shall, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) New Grounds. A party who wishes the court to consider any new ground in support of a civil action described in 28 U.S.C. §1581(a) shall aver the new ground in accordance with this rule and, as provided in 28 U.S.C. §2638, shall also aver that the new ground: (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision that was contested in the protest.

(c) Defenses—Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as

is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(d) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, discharge in bankruptcy, duress, estoppel, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(e) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(f) Pleading To Be Concise and Direct—Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(g) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

For an action described in 28 U.S.C. §1581(c), the complaint shall contain: (1) a citation to the administrative determination to be reviewed, (2) a statement of the issues presented by the action and (3) a demand for judgment.

Rule 9. Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 10. Form of Pleadings

(a) Caption—Names of Parties. Every pleading shall contain a caption setting forth the name of this court, the title of the action, the court number, and a designation as in Rule 7(a). In the caption of the summons and the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs—Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference—Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in an-

other pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is part thereof for all purposes.

Rule 11. Signing of Pleadings, Motions or Other Papers—Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Every pleading, motion, or other paper of the United States shall be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, may be signed by an attorney authorized to do so on behalf of the agency. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings or other papers need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the pleader or movant attorney or party.

(b) Representation To Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances.—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in USCIT R. 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability To Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of USCIT R. 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When Presented.

(1) Unless a different time is prescribed in a statute of the United States,

(A) the United States, or an officer or agency thereof, shall serve an answer to the complaint, or to a cross-claim, or a reply to a counterclaim within 60 days after the service upon the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, of the pleading in which the claim is asserted; except that,

(i) in an action described in 28 U.S.C. §1581(c), no answer shall be served or filed, and

(ii) in an action described in 28 U.S.C. §1581(f), involving an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the answer shall be served within 10 days after being served with the summons and complaint. For good cause shown, the court in any action may order a different period of time.

(B) Any other defendant shall serve an answer within 20 days after being served with the summons and complaint, or

(C) If service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party other than the United States or an officer or agency thereof served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of the summons and complaint, (5) failure to state a claim upon which relief can be granted, (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside of the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)–(6) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) of this rule on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of the summons and complaint is waived (A) if omitted from a motion in the circumstances described in subdivision (g) of this rule, or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1,

1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

REFERENCES IN TEXT

Section 777(c)(2) of the Tariff Act of 1930, referred to in subd. (a)(1)(A)(ii), is classified to section 1677f(c)(2) of Title 19, Customs Duties.

Rule 13. Counterclaim and Cross-Claim

(a) Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover upon a bond or customs duties relating to such merchandise.

(b) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(c) Counterclaim Against the United States. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or an officer or agency thereof.

(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(e) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(f) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover upon a bond or customs duties relating to such merchandise. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(h) Separate Trials—Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(i) Demand for a Complaint.

(1) Notwithstanding the pendency of the civil action on a Reserve or Suspension Calendar, in a civil action described in 28 U.S.C. §1581(a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion shall include, among other information, (A) a statement of the reasons for wanting to proceed at this time, (B) a proposed timetable for requiring the plaintiff to file a complaint if different from the time provided for in this rule and the reasons for a different time, and, in a suspended action, other scheduling information that the defendant believes necessary to enable the court to formulate an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the defendant at the time the motion is filed that the defendant intends to assert in its answer.

(3) If an order granting a motion for a demand for a complaint is entered, plaintiff shall file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If an order granting a motion for a demand for a complaint is entered and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk shall enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12, and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover upon a bond or customs duties relating to such merchandise. The plaintiff may assert any claim against the third-party defendant, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover upon a bond or customs duties relating to such merchandise, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party

may move to strike the third-party claim, or for its severance or for a separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been noticed for trial, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

(b) Amendments To Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amendment arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4 for service of the pleadings commencing the action, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of the pleadings commencing the action to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 16. Postassignment Conferences—Scheduling—Management

(a) Postassignment Conferences—Objectives. In any action, the judge to whom the action is assigned may, in the discretion of that judge, direct the attorneys for the parties and any unrepresented parties to appear for a conference or conferences for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the action will not be protracted because of lack of management;

(3) discouraging wasteful activities;

(4) improving the quality of the proceedings for the final disposition of the action through more thorough preparation; and

(5) facilitating the settlement of the action.

(b) Scheduling and Planning. Except as provided in Rule 56.2 or when the judge to whom the action is assigned finds that a scheduling order will not aid in the disposition of the action and enters an order to that effect, together with a statement of reasons and facts upon which the order is based, the judge shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before submission of the action for final disposition,

a final postassignment conference, and trial or submission of a dispositive motion; and

(5) any other matters appropriate in the circumstances of the action.

The scheduling order, or the order that a scheduling order will not aid in the disposition of the action, shall issue as soon as practicable but in no event more than 90 days after the action is assigned. A schedule shall not be modified except by leave of the judge upon a showing of good cause.

(c) Subjects to be Discussed at Postassignment Conferences. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging briefs, and the date or dates for further conferences and for submission of the action for final disposition;

(6) the advisability of referring matters to a master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the scheduling or postassignment conference order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(11) access to confidential or privileged information contained in an administrative record, which is the subject of the action; and

(12) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any postassignment conference shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) Final Postassignment Conference. Any final postassignment conference shall be held as close to the time of submission of the action for final disposition as reasonable under the circumstances. The participants at any such conference shall formulate a plan for submission of the action for final disposition. At least one of the attorneys on behalf of each of the parties and any unrepresented parties shall participate in the conference.

(e) Orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final postassignment conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or postassignment conference order, or if no appearance is made on behalf of a party at a scheduling or postassignment conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2), (3), and (4). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

PRACTICE COMMENT

The attorneys for the parties and any unrepresented parties are expected to consult prior to a postassignment conference. The consultations should pertain to such matters as: access to the confidential portions of the administrative record, if any; the definition of the issues; whether discovery is necessary or permissible; and, the establishment of a proposed discovery schedule, if it is agreed that discovery will be conducted.

TITLE IV—PARTIES

Rule 17. Parties Plaintiff and Defendant—Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity To Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which

it was organized. In all other cases, capacity to sue or be sued shall be determined by the law of the appropriate state except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by 28 U.S.C. §§754 and 959(a).

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party, except that in an action described in 28 U.S.C. §1581(a), a party may join claims only if they involve a common issue.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons To Be Joined if Feasible. A person shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest, or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)–(2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)–(2) of this rule who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the

action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. [Reserved]

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action To Be Maintained—Notice—Judgment—Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3) of this rule, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2) of this rule, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3) of this rule, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) of this rule was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 23.1. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action

the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In an action described in 28 U.S.C. §1581(c), a timely application shall be made no later than 30 days after the date of service of the complaint as provided for in Rule 3(e), unless for good cause shown at such later time for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; or (2) under circumstances in which by due diligence a motion to intervene under this subsection could not have been made within the 30-day period.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. Except in an action described in 28 U.S.C. §1581(c), a person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. §2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

In an action described in 28 U.S.C. §1581(c), an interested party who was a party to the proceeding in connection with which the matter arose and who desires to intervene pursuant to subparagraph (a) shall, after consultation in accordance with Rule 7(b), serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state (1) whether the application for intervention has been consented to by the parties, and (2) the grounds in support of the motion. When the applicant for intervention seeks to intervene on the side of the plaintiff, the motion shall state the applicant's standing, and shall state the administrative determination to be reviewed and the issues that the intervenor desires to litigate. When the applicant for intervention seeks to intervene on the side of the defendant, the motion shall state the applicant's standing. If no objection has been filed within 10 days after service of the motion, or if the motion has been consented to by all of the parties, the clerk of the court may order the requested relief.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. §455, a completed ''Disclosure Statement'' form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors, or *amicus curiae*. A copy of the ''Disclosure Statement'' form is shown in Form 13 of the Appendix of Forms.

Permissive intervention in this court is subject to the statutory provisions of 28 U.S.C. §2631(j).

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and shall be served on the parties as provided in Rule 5 and upon the persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest

is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers—Death or Separation From Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

TITLE V—DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court as prescribed by these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation—Materials. Subject to the provisions of paragraph (4) of this subdivision (b), a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this subdivision (b) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation—Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (1) of this subdivision (b) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii)

Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subparagraph (4)(C) of this subdivision (b), concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial, and who is not expected to be called as a witness at trial, only as provided in Rule 35(b), or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subparagraphs (4)(A)(ii) and (4)(B) of this subdivision (b); and (ii) with respect to discovery obtained under subparagraph (4)(A)(ii) of this subdivision (b) the court may require, and with respect to discovery obtained under subparagraph (4)(B) of this subdivision (b) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon its own initiative, or upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden, delay or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery Conference. At any time after the filling of a complaint the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a postassignment conference authorized by Rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or

response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address and telephone number. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(h) Costs. All costs, charges, and expenses incident to taking depositions shall be borne by the party making application for the same unless otherwise provided for by stipulation or by order of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in this court may file a verified petition. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in this court but is presently unable to bring it or cause it to be brought, (B) the subject matter of the expected action and the petitioner's interest therein, (C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (E) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing, the notice shall be served in the manner provided in Rule 4 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner prescribed by Rule 4, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character prescribed by Rules 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules, it may be used in any other action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take depositions, upon the same notice and service thereof as if the action was pending. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character prescribed by Rules 34 and 35, thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in court.

(c) Perpetuation by Action. This rule does not limit the power of this court to entertain an action to perpetuate testimony.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 28. Persons Before Whom Depositions May Be Taken—Commissions and Letters Rogatory

(a) Within the United States. Within the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not a requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed ''To the Appropriate Authority in [here name the country].'' When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998.)

Rule 29. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken. After service of the complaint, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the complaint upon any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(7) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination—General Requirements—Special Notice—Nonstenographic Recording—Production of Documents and Things—Deposition of Organization—Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The person so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.

(5) The parties may stipulate in writing, or the court may upon motion order, that the testi-

mony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c) of this rule, any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e) of this rule, and the certification of the officer required by subdivision (f) of this rule shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

(6) The parties may stipulate in writing, or the court may order, that a deposition be taken by telephone. For the purposes of this rule and Rule 28(a), a deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to the deponent.

(7) Leave of court is not required for the taking of a deposition by the plaintiff if the notice (A) states that the person to be examined is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period prescribed by subdivision (a) of this rule, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(7) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(c) Examination and Cross-Examination—Record of Examination—Oath—Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(5) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition; and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion To Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, delay, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as prescribed by Rule 26(c). If the order terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness—Changes—Signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer, with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver, or of the illness or absence of the witness, or the fact of the refusal to sign, together with the reasons, if any, given therefor; and the deposition may then be used as fully as though signed, unless, on a motion to suppress under Rule 32(c)(4), the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer—Exhibits—Copies—Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked: ''Deposition of [here insert name of witness]'' and, if ordered by the court, shall promptly file it with the clerk of the court or send it by registered or certified mail to the clerk for filing and give prompt notice of its filing to the party taking the deposition. If filing has not been ordered by the court, the officer shall send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering or deterioration.

Documents and things produced for inspection during the examination of the witness, shall,

upon request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing, or its receipt by such party, to all other parties.

(g) Failure to Attend or to Serve Subpoena—Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (c), are set out in this Appendix.

Rule 31. Deposition Upon Written Questions

(a) Serving Questions—Notice. After service of the complaint, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(4).

Within 30 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 10 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross-questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer To Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e) and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed, or received by the party taking it, that party shall promptly give notice thereof to all other parties.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996.)

Rule 32. Use of Depositions in Court Proceedings [1]

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(4) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; (B) that the witness is out of the United States, unless it appears that the absence of the

[1] As provided in 28 U.S.C. §2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§2639 and 2641(b), or the rules of the court.

witness was procured by the party offering the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exists as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the officer to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Federal Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (c)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(1) As to notice. All errors and irregularities in the notice for taking deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a), are set out in this Appendix.

Rule 33. Interrogatories to Parties

(a) Availability—Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after filing of the complaint and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope—Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a postassignment conference or other later time.

(c) Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or in-

spection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after filing of the complaint and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 35. Physical and Mental Examinations of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including the results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a re-

port of an examiner or the taking of a deposition of an examiner in accordance with the provisions of any other rule.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after filing of the complaint, and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders determine that final disposition of the request be made at a postassignment conference or at a designated time prior to trial. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a postassignment scheduling or conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 37. Failure To Make or Cooperate in Discovery—Sanctions

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Motion. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(4) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(2) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(3) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or

both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure To Comply With Order. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court. If a party or an officer, director, or managing agent of a party or person designated under Rule 30(b)(4) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35 or if a party fails to obey an order entered under Rule 26(f), the court may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders; except an order to submit to a physical or mental examination.

(5) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (1), (2) and (3) of this subdivision (b), unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(4) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions (b)(1), (b)(2) and (b)(3) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Subpoena of Person in Foreign Country. A subpoena may be issued as provided in 28 U.S.C. §1783, under the circumstances and conditions therein stated.

(f) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

TITLE VI—TRIALS

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

(c) Demand—Specification of Issues. In the demand a party may specify the issues which the

party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 39. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as prescribed by Rule 38, the action shall be so designated. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or (2) the court upon motion or on its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

(b) By the Court. Issues not demanded for trial by jury as prescribed by Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of the parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40. Request for Trial

(a) Request. At any time after issue is joined in an action, unless the court otherwise directs, any party who desires to try an action shall: (1) confer with the opposing party or parties to attempt to reach agreement as to the time and place of trial, and (2) serve upon the opposing party or parties, and file with the court, a request for trial which shall be substantially in the form set forth in Form 6 in the Appendix of Forms. The request shall be served and filed at least 30 days prior to the requested date of trial, or upon a showing of good cause, at a reasonable time prior to the requested date of trial. A party who opposes the request shall serve and file its opposition within 10 days after service of the request, unless a shorter period is directed by the court. In all instances where a trial is requested to be held at a location other than or in addition to the courthouse at One Federal Plaza, New York, New York, all other parties shall serve and file a response within 10 days after the service of the request, unless a shorter period is directed by the court.

(b) Designation. The court shall designate the date and place for trial, as prescribed in Rule 77(c)(1) or (2), and shall give reasonable notice thereof to the parties.

(c) Premarking Exhibits. All exhibits and documents which are intended to be introduced in evidence are to be marked for identification and exhibited to opposing counsel prior to trial or court proceeding.

(As amended Oct. 3, 1990, eff. Jan. 1, 1991.)

PRACTICE COMMENT

To implement the authority conferred upon the chief judge by 28 U.S.C. §§253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, a list of tentative dockets and the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal—Effect Thereof.

(1) By Plaintiff—By Stipulation. Subject to the provisions of Rule 23(e), of Rule 56.2, of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal which shall be substantially in the form set forth in Form 7 of the Appendix of Forms at any time before service by the adverse party of an answer or motion for summary judgment, whichever occurs first, or (B) by filing a stipulation of dismissal, which shall be substantially in the form set forth in Form 8 of the Appendix of Forms, signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision (a), an action shall not be dismissed by the plaintiff unless upon order of the court, and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal—Effect Thereof.

(1) Actions on the Reserve Calendar or the Suspension Disposition Calendar are subject to dismissal for lack of prosecution at the expiration of the applicable period of time as prescribed by Rules 83 and 85.

(2) Actions commenced pursuant to 28 U.S.C. §1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. §1516a.

(3) Whenever it appears that an action is not being prosecuted with due diligence, the court may upon its own initiative after notice, or upon motion of a defendant, order the action dismissed for lack of prosecution.

(4) For failure of the plaintiff to comply with these rules or with any order of the court, a defendant may move that the action be dismissed.

(5) A dismissal under this subdivision (b) operates as a dismissal upon the merits, unless the court otherwise directs.

(c) Insufficiency of Evidence. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the judgment shall be supported by either a statement of findings of fact and conclusions of law or an opinion stating the reasons and facts upon which the judgment is based. A dismissal under this subdivision (c) operates as a dismissal upon the merits, unless the court otherwise directs.

(d) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subdivision (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(e) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 42. Consolidation—Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Rule 43. Taking of Testimony [1]

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless a federal law, these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(e) Documents Specially Admissible.

(1) Reports—Depositions—Affidavits. In addition to other admissible evidence, when the value of merchandise or any of its components is in issue, reports or depositions of consuls, customs officers, and other officers of the United States and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted in evidence, as provided in 28 U.S.C. §2639(c), when served upon the opposing party in accordance with this rule.

(2) Service. A copy of any report, deposition or affidavit described in paragraph (1) of this subdivision (e), which is intended to be offered in evidence, shall be served on the opposing party with the request for trial. A party other than the party serving the request for trial shall serve a copy of any report, deposition or affidavit which that party intends to offer in evidence

[1] As provided in 28 U.S.C. §2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§2639 and 2641(b), or the rules of the court.

upon the opposing party within 15 days after service of the request for trial. Timely service of copies of such documents may be waived or the time extended upon consent, or by order of the court for good cause shown.

(3) Objections. Objections to the admission of such documents in evidence may be made at the trial.

(4) Pricelists—Catalogs. When the value of merchandise is in issue, pricelists and catalogs may be admitted into evidence when duly authenticated, relevant, and material.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 14, 1997, eff. Jan. 1, 1998.)

PRACTICE COMMENT

The availability of contemporaneous transmission per Rule 43(a) is in addition to other provisions of law and rules regarding the receipt of testimony and evidence in the court. See, e.g., 28 U.S.C. §§256 (trials outside New York), 2639(c) (special evidence rules), and 2641 (confrontation of witnesses, inspection of evidence). These provisions may be factors in determining whether the court will permit the reception of testimony from a different location.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subd. (a), are set out in this Appendix.

Rule 44. Proof of Official Record

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are set out in this Appendix.

Rule 45. Subpoena

(a) Form; Issuance.

(1) Every subpoena shall

(A) state the name of the court; and

(B) state the title of the action, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the court. A subpoena for attendance at a deposition shall issue from the court. If separate from a subpoena commanding the attendance of a person, a

subpoena for production or inspection shall issue from the court.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to practice before the Court of International Trade as an officer of the court may also issue and sign a subpoena on behalf of the court.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within 100 miles of the place of the deposition, hearing, trial, production, or inspection specified in the subpoena. When a statute of the United States provides therefor, or when the interest of justice may require, the court upon proper application and cause shown may authorize the service of a subpoena at any other place. A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C. §1783.

(3) Proof of service when necessary shall be made by filing with the clerk of the court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. An adequate cause for failure to obey exists when a subpoena purports to require a non-

party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

(As amended June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 47. Jurors

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) Peremptory Challenges. The court shall allow the number of peremptory challenges provided by 28 U.S.C. §1870.

(c) Excuse. The court may for good cause excuse a juror from service during trial or deliberation.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 48. Number of Jurors—Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47(c). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 49. Special Verdicts and Interrogatories

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal

questions raised by the motion. Such a motion may be renewed by service and filing not later than 30 days after the entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same; Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 30 days after the entry of the judgment.

(d) Same; Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

PRACTICE COMMENT

Rule 50 has been amended to conform to the new Rule 50 under the Federal Rules of Civil Procedure, which went into effect on December 1, 1991. The time for filing a motion for a new trial in the court, 30 days, is governed by 28 U.S.C. §2646. To avoid confusion and inefficiency, Rule 50(b) provides the same 30-day filing period for any motion filed thereunder. In contrast, Rule 50(b) of the Federal Rules of Civil Procedure, provides a 10-day period. However, motions for new trials in courts in which the Federal Rules of Civil Procedure apply are not subject to 28 U.S.C. §2646. The same comment is applicable to Rule 50(c)(2).

Rule 51. Instructions to Jury—Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of this court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

(b) Amendment. Upon motion of a party, or upon its own motion, made not later than 30 days after the date of entry of the judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made an objection in this court to such findings or has made a motion to amend them or a motion for judgment.

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 53. Masters

(a) Appointment and Compensation. The court, with the concurrence of a majority of all the judges, may appoint one or more standing masters, and a judge, to whom an action is assigned, may appoint a special master therein. As used in these rules, the word ''master'' includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court, as the court may direct. The master shall not retain the master's report as security for the master's compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subject to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 7. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

TITLE VII—JUDGMENT

Rule 54. Judgments

(a) Definition—Form. ''Judgment'' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Attorney's Fees.

(1) Claims for attorney's fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(2) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(3) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in USCIT R. 52(a), and a judgment shall be set forth in a separate document as provided in USCIT R. 58.

(4) By court rules, the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings.

(5) The provisions of subparagraphs (1) through (4) do not apply to claims for fees and expenses as sanctions for violations of these rules or under 28 U.S.C. §1927.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as prescribed by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

In all cases the party entitled to a judgment by default shall apply to the court therefor.

When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with 10-days written notice of the application for judgment. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) Setting Aside Default. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside as prescribed by Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the United States. No judgment by default shall be entered against the

United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim or cross-claim, or to obtain a declaratory judgment, may, at any time after the expiration of the initial time within which to file an answer or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim or cross-claim is asserted, or a declaratory judgment is sought, may, at any time after the filing of a complaint, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) When Leave Is Required. A motion for summary judgment may not be filed by any party, except by order of the court upon motion, (1) after the action has been set for trial, or (2) after the filing of a stipulation of the parties or a pretrial memorandum containing all of the material facts, or (3) after the filing of his response to a motion for summary judgment by an adverse party.

(d) Motion and Proceedings Thereon. A hearing upon a motion may be requested as prescribed by Rule 7(c). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(e) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(f) Form of Affidavits—Further Testimony—Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith, except that all papers and documents which are part of the official record of the action pursuant to Title IX of these rules may be referred to in an affidavit without attaching copies, and shall be considered by the court without additional certification. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(g) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(i) Annexation of Statement. Upon any motion for summary judgment, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 56.1. Judgment Upon an Agency Record for an Action Other Than That Described in 28 U.S.C. § 1581(c)

(a) Motion for Judgment. After issue is joined in any action in which a party believes that the determination of the court is to be made solely upon the basis of the record made before an agency, that party may move for judgment in its favor upon all or any part of the agency determination.

(b) Cross-Motions. When a motion for judgment upon an agency record is filed by a party, an opposing party shall not file a cross-motion for judgment upon an agency record. If the court determines that judgment ought to be entered

in favor of an opposing party, it may enter judgment in favor of that party, notwithstanding the absence of a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, shall include a statement setting forth in separate numbered paragraphs:

(A) The administrative determination sought to be reviewed with appropriate reference to the Federal Register; and

(B) The issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or, how the determination may be unwarranted by the facts to the extent that the agency may or may not have considered facts which, as a matter of law, should or should not have been properly considered.

(2) The brief shall include the authorities relied upon and the conclusions of law deemed warranted by the authorities. All references to the administrative record shall be made by citing the portions of the record to the factual or legal issues raised. Citations shall be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number.

(d) Time to Respond. A response to a motion for judgment upon an agency record shall be served within 30 days after service of the motion. The moving party shall have 10 days after service of the response to the motion to serve a reply. No other papers or briefs shall be allowed, except by leave of court.

(e) Hearing. Upon motion of a party, or upon its own initiative, the court may direct oral argument on a motion for judgment upon an agency record at a time and place designated as prescribed in Rule 77(c).

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in favor of any party.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

An action in which the determination of the court is to be made solely upon the basis of a record made before an agency shall be submitted for determination pursuant to this rule unless the court otherwise directs.

As required by Rule 81(*l*), a reply brief in an action submitted for determination pursuant to this rule shall be confined to rebutting matters contained in the brief of the responding party.

Rule 56.2. Judgment upon an Agency Record for an Action Described in 28 U.S.C. § 1581(c)

(a) Proposed Briefing Schedule and Joint Status Report. The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures.

Any proposed judicial protective order shall be filed within 30 days after the date of service of the complaint. Prior to the filing of the proposed judicial protective order, the moving party shall consult with all other parties to the action in accordance with Rule 7(b) regarding the terms and conditions of the proposed judicial protective order.

Any motion to intervene as of right shall be filed within the time and in the manner prescribed by Rule 24.

Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action shall be filed by a party to the action within 30 days after the date of service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor shall file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the moving party shall consult with all other parties to the action in accordance with Rule 7(b).

No later than 30 days after the filing of the record with the court, the parties, including proposed intervenors, shall file with the clerk (1) a Joint Status Report, and (2) a proposed briefing schedule. The Joint Status Report shall be signed by counsel for all parties and shall set forth answers to the following questions, although separate views may be set forth on any point on which the parties cannot agree:

1. Does the court have jurisdiction over the action?

2. Should the case be consolidated with any other case, or should any portion of the case be severed, and the reasons therefor?

3. Should further proceedings in this case be deferred pending consideration of another case before the court or any other tribunal and the reasons therefor?

4. Are there any outstanding issues concerning the issuance of a judicial protective order?

5. Is there any other information of which the court should be aware at this time?

The proposed briefing schedule shall indicate whether the parties (1) agree to the time periods set forth in Rule 56.2(d), (2) agree to time periods other than the periods set forth in Rule 56.2(d), or (3) cannot agree upon a time period. In the event the parties cannot agree upon a time period, the parties shall indicate the areas of disagreement and shall set forth the reasons for their respective positions.

After the Joint Status Report and proposed briefing schedule are filed, the judge promptly shall enter a scheduling order.

(b) Cross-Motions. When a motion for judgment upon an agency record is filed by a party, an opposing party shall not file a cross-motion for judgment upon an agency record. If the court determines that judgment should be entered in favor of an opposing party, it may enter judgment in favor of that party, notwithstanding the absence of a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on

the motion, either contesting or supporting the agency determination, shall include a statement setting forth in numbered paragraphs:

(A) the administrative determination sought to be reviewed with appropriate reference to the Federal Register; and

(B) the issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or, how the determination may be unwarranted by the facts to the extent that the agency may or may not have considered facts which, as a matter of law, should have been properly considered.

(2) The brief shall include the authorities relied upon and the conclusions of law deemed warranted by the authorities. All references to the administrative record shall be made by citing the portions of the record relevant to the factual or legal issues raised. Citations shall be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number. The brief also shall include a table of contents and a table of authorities.

(3) Within three days of the date of filing of a brief, the party submitting the brief shall file an appendix containing a copy of those portions of the administrative record cited in the brief.

(d) Time to Respond. Unless the scheduling order otherwise provides, a motion for judgment upon an agency record shall be served within 60 days after the date of service of the scheduling order. Responsive briefs shall be served within 60 days after the date of service of the brief of the moving party. The moving party shall have 25 days after service of the response to the motion to serve a reply. No other papers or briefs shall be allowed, except by leave of court.

(e) Hearing. Upon motion of a party, subject to the time limitations set forth in Rule 7(c), or upon its own initiative, the court may direct oral argument on a motion for judgment upon an agency record at a time and place designated in Rule 77(c). The moving party, after consultation with all other parties to the action, shall request a hearing date that is not more than 30 days after the date of service of the reply memorandum, except for good cause shown as to why the hearing should be scheduled on a later date.

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in favor of any party.

(g) Voluntary Dismissal—Time Limitation. In an action described in 28 U.S.C. §1581(c), a plaintiff desiring to voluntarily dismiss its action in accordance with Rule 41(a)(1)(A), shall file a notice of dismissal within 30 days after the date of service of the complaint. In the event plaintiff desires to dismiss its action more than 30 days after the date of service of the complaint, a stipulation of dismissal shall be filed in accordance with Rule 41(a)(1)(B), or if circumstances warrant intervention by the court, in accordance with Rule 41(a)(2).

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995; May 27, 1998, eff. Sept. 1, 1998.)

PRACTICE COMMENT

Provided its requirements are followed, Rule 5(h) allows for the filing of a non-confidential version of a brief provided for in this rule, and a confidential version correcting the designation of business proprietary information in the original submission, one business day after the original filings under this rule.

Rule 57. Declaratory Judgments

The procedure for obtaining a declaratory judgment pursuant to 28 U.S.C. §2201, shall be in accordance with these rules and the right to trial by jury may be demanded under the circumstances and in the manner prescribed by Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for declaratory judgment.

Rule 58. Entry of Judgments, Decrees or Final Orders

Subject to the provisions of Rule 54(b), a judgment, decree or final order shall be entered upon every final decision from which an appeal lies, except an order of dismissal either pursuant to Rule 41(b)(1), or in an unassigned action pursuant to Rule 41(b)(2). Every such judgment, decree or final order shall be set forth on a separate document, signed by the court, and promptly entered by the clerk. A judgment, decree or final order is effective only when so set forth and entered as prescribed by Rule 79(a). Proposed forms of judgments, decrees or final orders shall not be submitted except upon direction of the court, or as required by these rules.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 58.1. Stipulated Judgment on Agreed Statement of Facts—General Requirements

An action described in 28 U.S.C. §1581(a) or (b) may be stipulated for judgment, at any time without brief or complaint or formal amendment of any pleading, by filing with the clerk of the court a stipulation for judgment on agreed statement of facts, signed by the parties or their attorneys, together with a proposed stipulated judgment. The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in USCIT Form 9 of the Appendix of Forms.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 59. New Trials—Rehearings—Amendment of Judgments

(a) Grounds. A new trial or rehearing may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury or in an action finally determined, for any of the

reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial or rehearing shall be served and filed not later than 30 days after the entry of the judgment or order.

(c) Time for Serving Affidavits. When a motion for a new trial or rehearing is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by order of the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 30 days after the entry of the judgment or order the court on its own initiative may order a new trial or rehearing for any reason for which it might have granted a new trial or rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial or rehearing, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion To Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 30 days after the entry of the judgment.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991.)

PRACTICE COMMENT

Rule 59(b) provides for a 30-day period within which to move for a new trial or rehearing. In contrast, Rule 59(b) of the Federal Rules of Civil Procedure provides for a 10-day period. The lengthier period is required by 28 U.S.C. §2646, a statute not applicable to the district courts.

Rule 60. Relief From Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party and after such notice, if any, as the court directs. After an appeal is filed, such mistakes may be corrected with leave of the appellate court.

(b) Mistakes, Inadvertence, Excusable Neglect—Newly Discovered Evidence—Fraud, Etc. On motion of a party or upon its own initiative and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in 28 U.S.C. §1655, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988.)

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings To Enforce a Judgment

(a) Automatic Stay—Exceptions—Injunctions. Except as stated herein or as otherwise ordered by the court, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or Rehearing, or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of a judgment or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or rehearing or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order

made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. If the judgment appealed from is rendered by a three-judge panel, no such order shall be made except (1) by such court sitting in open court or (2) by the assent of all judges of such court evidenced by their signatures to the order.

(d) Stay Upon Appeal. When an appeal is taken, the appellant, by giving a supersedeas bond, may obtain a stay subject to the exception contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the United States or Agency Thereof. When an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay According to State Law. In any state in which a judgment is a lien upon the property of the judgment debtor and in which the judgment debtor is entitled to a stay of execution, a judgment debtor is entitled to such stay as would be accorded the judgment debtor had the action been maintained in the courts of that state.

(g) Stay of Judgment as to Multiple Claims or Multiple Parties. When the court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988.)

PRACTICE COMMENT

The court-ordered exception to the 30-day automatic stay under subdivision (a) is intended to permit timely enforcement of judgments in cases involving perishable merchandise, or where time is otherwise shown to be of the essence.

TITLE VIII—PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 63. Contempt

A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b), shall be commenced by the service of a motion or order to show cause. The affidavit upon which the motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the contemnor's attorney; otherwise service shall be made personally, in the manner provided for the service of a complaint. If an order to show cause is sought, such order may, upon necessity shown therefor, embody a direction to a United States marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for the contemnor's appearance at the hearing, and further conditioned that the alleged contemnor will be thereafter amenable to all orders of the court for surrender.

If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, the alleged contemnor shall, upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, the alleged contemnor shall make written demand therefor on or before the return day or adjourned day of the application; otherwise the alleged contemnor will be deemed to have waived a trial by jury.

In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by a United States marshal, and confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of nonpayment of the fine for a period exceeding 6 months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

In the event the alleged contemnor shall be found not guilty of the charges, the alleged contemnor shall be discharged from the proceeding.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the appropriate state law existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated, and regardless of whether the remedy by the appropriate state procedure is ancillary to an action or must be obtained by an independent action.

Rule 65. Injunctions

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order—Notice—Hearing—Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 65.1. Security—Proceedings Against Sureties

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. The bond, stipulation, or other undertaking must be secured by a corporate surety holding a certificate of authority from the Secretary of the Treasury. Except as otherwise provided by law, where the amount has been fixed by a judge, all bonds, stipulations, or other undertakings, shall be approved by the judge.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988.)

PRACTICE COMMENT

Circular No. 570, ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'', is published annually, as of July 1, in the Federal Register, under Fiscal Service, Bureau of Government Financial Operations. Interim changes in the circular are published in the Federal Register as they occur. Copies of the circular may be obtained from: Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, Telephone: (202) 634–5010.

Rule 66. Receivers Appointed by Federal Courts

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of 28 U.S.C. §§2041, 2042 and 2043; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986.)

Rule 67.1. Deposit in Court Pursuant to Rule 67

(a) Order for Deposit—Interest Bearing Account. Whenever a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party shall file, by delivery or by mailing by certified mail, return receipt requested, the proposed order with the clerk or financial deputy who will inspect the proposed order for proper form and content and compliance with this rule prior to signature by the judge for whom the order is prepared. The proposed order shall be substantially in the form set forth in Form 16 of the Appendix of Forms.

(b) Orders Directing Investment of Funds by Clerk. Any order obtained by a party or parties in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. §2041 shall include the following:

(1) the amount to be invested;

(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;

(3) a designation of the type of account or instrument in which the funds shall be invested;

(4) wording which directs the clerk to deduct from the income earned on the investment a fee, consistent with that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, whenever such income becomes available for deduction from the investment so held and without further order of the court.

(Added Oct. 3, 1990, eff. Jan. 1, 1991; amended Mar. 1, 1991, eff. Mar. 1, 1991.)

Rule 68. Attorney's Fees and Expenses

(a) Time for Filing. The court may award attorney's fees and expenses where authorized by law. Applications must be filed within 30 days after the date of entry by the court of a final judgment.

(b) Content of Application. Each application for attorney's fees and expenses as provided for in subdivision (a) shall contain a citation to the authority which authorizes an award, and shall indicate the manner in which the prerequisites for an award have been fulfilled. In addition, each application shall contain a statement, under oath, which specifies:

(1) the nature of each service rendered;

(2) the amount of time expended in rendering each type of service; and

(3) the customary charge for each type of service rendered.

(c) Response and Reply. The responding party shall have 30 days from the date of service of the application to file a response. No other papers or briefs shall be allowed, except as the court, upon its own initiative, shall direct.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

PRACTICE COMMENT

An application for attorney's fees and expenses shall be substantially in the form set forth in Form 15 of the Appendix of Forms.

Rule 69. Execution

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which execution is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules, or in the manner provided by the practice of the state in which execution is sought.

(b) Against Certain Public Officers. When a judgment has been entered against a collector or

other officer of revenue under the circumstances stated in 28 U.S.C. §2006, and when the court has given the certificate of probable cause for the officer's act as provided in that statute, execution shall not issue against the officer or the officer's property but the final judgment shall be satisfied as provided in such statute.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

TITLE IX—FILING OF OFFICIAL DOCUMENTS

Rule 70. Documents in an Action Described in 28 U.S.C. §1581(a) or (b)

Upon service of the summons on the Secretary of the Treasury, the appropriate customs officer shall forthwith transmit the following items, if they exist, to the clerk of the court, as part of the official record of the civil action:

(1) consumption or other entry and the entry summary;

(2) commercial invoice;

(3) special customs invoice;

(4) copy of protest or petition;

(5) copy of denial, in whole or in part, of the protest or petition;

(6) importer's exhibits;

(7) official and other representative samples;

(8) any official laboratory reports; and

(9) copy of any bond relating to the entry.

If any of the items do not exist in a particular action, an affirmative statement to that effect shall be transmitted to the clerk of the court as part of the official record.

Rule 71. Documents in an Action Described in 28 U.S.C. §1581(c) or (f)

(a) Actions Described in 28 U.S.C. §1581(c). Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in an action described in 28 U.S.C. §1581(c), within 40 days after the date of service of the complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall file with the clerk of the court the items specified in paragraphs (1) and (2) of this subdivision (a), if they exist, and the certified list specified in paragraph (3) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930.

(2) A copy of the determination and the facts and conclusions of law upon which such determination was based, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(3) A certified list of all items specified in paragraphs (1) and (2) of this subdivision (a).

(b) Alternative Procedure in an Action Described in 28 U.S.C. §1581(c). As an alternative to the procedures prescribed in subdivision (a) of this rule in an action described in 28 U.S.C. §1581(c):

(1) Within 40 days after the date of service of the complaint upon the administering authority or the International Trade Commission, the administering authority or the Commission may file with the clerk of the court a certified list of all items described in subdivisions (a)(1) and (a)(2) of this rule, along with a copy of the determination and the facts and conclusions of law upon which such determination was based. The Commission shall in addition file a copy of its staff report of information received in the investigation. If either agency uses this alternative procedure, it shall serve on the parties notice of that fact in conjunction with service of the certified list.

(2) The agency shall retain the remainder of the record. All parts of the record shall be a part of the record on review for all purposes.

(3) At any time, the court may order any part of the record retained by the agency to be filed. A motion by a party to have the agency file a retained part of the record shall set forth reasons why the submission of appendices required by Rule 56.2(c) is insufficient to fairly present the relevant portions of the record to the court.

(c) Confidential or Privileged Information in an Action Described in 28 U.S.C. §1581(c). In an action described in 28 U.S.C. §1581(c), any document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested and that is required to be filed with the clerk of the court, shall be filed under seal. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted.

(d) Documents in an Action Described in 28 U.S.C. §1581(f). In an action described in 28 U.S.C. §1581(f), within 15 days after the date of service of the summons and complaint on the administering authority or the International Trade Commission, the administering authority or the Commission shall file, with the clerk of the court, under seal, the confidential information involved, together with pertinent parts of the record, which shall be accompanied by a nonconfidential description of the nature of the information being filed, as part of the official court record of the action.

(e) Documents Filed—Copies. Certified copies of the original papers in the agency proceeding may be filed.

(f) Filing of the Record With the Clerk of the Court—What Constitutes. The filing of the record shall be as prescribed by subdivision (a) of this rule, unless the alternative procedure prescribed by subdivision (b) of this rule is followed. In the latter event, the filing of the certified list and the part of the record filed pursuant to subdivision (b) shall constitute filing of the record.

(As amended Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 14, 1997, eff. Jan. 1, 1998.)

PRACTICE COMMENT

The court has established Security Procedures for Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to

confidential information or privileged information received by the court and may include: trade secrets, commercial or financial information, and information provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of Security Procedures regulates the transmittal of confidential information to and from the clerk by government agencies and private parties. A copy of Section 11(a) is available upon request from, and is posted in, the Office of the Clerk.

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subd. (a), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Tariff Act of 1930 is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of Title 19, Customs Duties. Section 777(a)(3) of the Tariff Act of 1930 is classified to section 1677f(a)(3) of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

Rule 72. Documents in All Other Actions Based Upon the Agency Record

(a) Documents Furnished in All Other Actions Based Upon the Agency Record. Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in all actions in which judicial review is upon the basis of the record made before an agency, other than those actions described in Rules 70 and 71, within 40 days after the service of the summons and complaint upon the agency, the agency shall file with the clerk of the court the items specified in paragraphs (1), (2) and (3) of this subdivision (a), if they exist, and the certified list specified in paragraph (4) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of the contested determination and the findings or report upon which such determination was based.

(2) A copy of any reported hearings or conferences conducted by the agency.

(3) Any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action. The agency shall identify and file under seal any document, comment, or other information obtained on a confidential basis, including a nonconfidential description of the nature of such confidential document, comment or information.

(4) A certified list of all items specified in paragraphs (1), (2) and (3) of this subdivision (a).

(b) Stipulations. The parties may stipulate that fewer documents, comments, or other information than those specified in subdivision (a) of this rule shall be filed with the clerk of the court. The agency shall retain the remainder of the record. All parts of the record shall be part of the record on review for all purposes. Upon request to the agency by a party, or by the court, at any time, any part of the record retained by the agency shall be filed by the agency with the clerk of the court forthwith, notwithstanding any prior stipulation or designation under this subdivision.

(c) Documents Filed—Copies. Certified copies of the original papers in the agency proceeding may be filed.

Rule 73. Time for Filing Documents—Notice of Filing

(a) Time. Upon motion of a party for good cause shown, or upon its own initiative, the court may shorten or extend the times for filing prescribed in the rules of this title.

(b) Notice. The clerk shall give notice to all parties of the date on which the record is filed.

TITLE X—ATTORNEYS

Rule 74. Admission to Practice[1]

(a) Qualifications. An attorney of good moral character who has been admitted to practice before the Supreme Court of the United States, the highest court of any state, the District of Columbia, a territory or possession, any United States court of appeals, or any United States district court, and is in good standing therein, may be admitted to practice before this court.

(b) Procedure.

(1) An applicant for admission shall file with the clerk a completed application, on the form shown in Form 10 of the Appendix of Forms, to be provided by the clerk.

(2) The applicant shall be admitted either (A) upon oral motion by a member of the bar of this court or of the Supreme Court of the United States, before a judge of this court who will administer the following oath:

> I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor at law of this court uprightly and according to law, and that I will support the Constitution of the United States, so help me God.

or (B) upon the filing of a certificate of a judge or of the clerk of any of the courts specified in subdivision (a) of this rule stating that the applicant is a member of the bar of such court and is in good standing therein.

(3) The applicant shall pay to the clerk a fee of $50, and shall be entitled to a certificate of admission. The clerk, as trustee, shall deposit the fee in a special account in a bank designated by the court and shall make expenditures from the special account as directed by the court.

(c) Admission of Foreign Attorneys. An attorney, barrister, or advocate who is qualified to practice at the bar of the court of any foreign state which extends a like privilege to members of the bar of this court may be specially admitted for purposes limited to a particular action. The applicant shall not, however, be authorized to act as attorney of record. In the case of such an applicant, the oath shall not be required and there shall be no fee. Such admission shall be granted only on motion of a member of the bar of this court.

(d) Pro Hac Vice Applications. An attorney who is eligible for admission to practice under subdivision (a) of this rule, and who has been retained to appear in a particular action by a legal services program may, upon written application and in the discretion of the court, be permitted

[1] An attorney admitted to practice before the United States Customs Court shall be deemed to be admitted to practice before the United States Court of International Trade.

to specially appear and participate in the particular action. A *pro hac vice* applicant shall state under penalty of perjury (i) the attorney's residence and office address, (ii) the court to which the applicant has been admitted to practice and the date of admission thereof, (iii) that the applicant is in good standing and eligible to practice in said court, (iv) that the applicant is not currently suspended or disbarred in any other court, and (v) if the applicant has concurrently or within the year preceding the current application made any *pro hac vice* application to this court, the title and the number of each action wherein such application was made, the date of the application, and whether or not the application was granted. If the *pro hac vice* application is granted, the attorney is subject to the jurisdiction of the court with respect to the attorney's conduct to the same extent as a member of the bar of this court, and no application fee is required.

(e) Disbarment or Other Disciplinary Action.

(1) Initiation of Proceedings. When a certificate is received from the clerk of any court, or a complaint supported by an affidavit filed with the clerk of this court, setting forth any of the following facts concerning a member of the bar of this court:

(A) that the attorney has resigned from the bar of the Supreme Court of the United States or any other federal court, or from any court of record of any state, territory, or possession;

(B) that he has been disbarred, suspended from practice or censured in the Supreme Court of the United States or any other federal court, or in any court of record of any state, territory, or possession;

(C) that he has been convicted of a crime involving moral turpitude; or

(D) that he has been guilty of dishonest or unethical conduct;

the clerk of this court shall forthwith deliver such certificate or complaint to the chief judge of this court.

(2) Sufficiency. The chief judge shall preliminarily examine such certificate or complaint and rule upon its sufficiency prima facie. If the chief judge deems the facts insufficient on their face to warrant disciplinary action, the chief judge shall so advise the complainant and the attorney named.

(3) Investigation and Prosecution. Where the certificate or complaint is deemed sufficient prima facie, the chief judge shall appoint a committee, consisting of three members of the bar of this court, to which the certificate or complaint shall be referred. It shall then be the duty of the committee to investigate the facts involved in such resignation, disbarment or suspension from practice or other facts alleged in the certificate or complaint. If, in the committee's judgment, probable cause for disbarment, suspension, or disciplinary action exists, it shall then be the duty of the committee to proceed against the attorney by an order signed by the chief judge setting forth the charges against the attorney and requiring the attorney, within 30 days after service of the order upon the attorney by delivery or by registered or certified mail, return receipt requested, to show cause as to why disciplinary action should not be taken.

(4) Appearance. The attorney named in the order to show cause may appear in person and may be represented by an attorney and shall have the right to file any answer which, in the attorney's opinion, the proceedings may warrant.

(5) Hearing and Report. The chief judge shall designate three judges of the court who shall hear the matter, after due notice to the attorney named in the order, and who shall then report their findings of facts and conclusions of law together with their recommendations to the full court.

(6) Action by the Court. The full court, after consideration of the record, may enter an order disbarring, suspending or otherwise disciplining such member of the bar, or dismissing the proceedings, or making such other disposition of the case as may be warranted by the record.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Mar. 25, 1998, eff. July 1, 1998.)

Rule 75. Practice—Appearance—Substitution of Attorneys—Withdrawal of Attorney—Notification of Changes

(a) Practice. Only an attorney admitted to the bar of the court may practice before the court, except that an individual may represent himself in an action. An attorney who is employed or retained by the United States, or an agency or officer thereof, may enter an appearance, file pleadings, and practice in this court in cases in which the United States or the agency is a party.

(b) Appearances.

(1) Except for an individual (not a corporation, partnership, organization or other legal entity) appearing *pro se*, each party and *amicus curiae* must appear through an attorney authorized to practice before the court. When a summons contains the name, address and telephone number of an attorney, the attorney shall be recognized as the attorney of record and no separate notice of appearance shall be required of the attorney. Provided, however, that an attorney representing the United States, or an agency or officer thereof, who is not otherwise admitted to practice before the court, shall serve a separate notice of appearance as prescribed by paragraph (2) of this subdivision (b).

(2) In all other instances, an attorney authorized to appear in an action shall serve a separate notice of appearance for each action. The notice shall be substantially in the form as set forth in Form 11 of the Appendix of Forms. An appearance may be made by an individual attorney or a firm of attorneys. If the appearance is made by a firm of attorneys the individual attorney responsible for the litigation shall be designated.

(c) Substitution of Attorneys. A party who desires to substitute an attorney may do so by serving a notice of substitution upon the prior attorney of record and the other parties. The notice shall be substantially in the form as set forth in Form 12 of the Appendix of Forms. If the prior attorney of record wishes to be heard

by the court on the substitution, that attorney may, by motion, request such relief as the attorney deems appropriate.

(d) Withdrawal of Attorney. An attorney of record may withdraw an appearance only by order of the court, upon motion served upon the attorney's client and the other parties.

(e) Notification of Changes. Whenever there is any change in the name of an attorney of record, the attorney's address or telephone number, a new notice of appearance for each action shall be promptly served upon the other parties and filed with the court. The notice shall be substantially in the form as set forth in Form 11 of the Appendix of Forms. Unless and until an attorney of record files a new notice of appearance as prescribed in this subdivision, service of all papers shall be made upon the attorney of record at the last known address.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

Rule 76. Amicus Curiae

The filing of a brief by an *amicus curiae* may be allowed upon a motion made as prescribed by Rule 7, or at the request of the court. The brief may be conditionally filed with the motion. The motion for leave shall identify the interest of the applicant and shall state the reasons why an *amicus curiae* is desirable. An *amicus curiae* shall file its brief within the time allowed the party whose position the *amicus curiae* brief will support unless the court for cause shown shall grant leave for later filing. In that event the court shall specify within what period an opposing party may answer. A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982.)

PRACTICE COMMENT

To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. §455, a completed ''Disclosure Statement'' form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors, or *amicus curiae*. A copy of the ''Disclosure Statement'' form is shown in Form 13 of the Appendix of Forms.

TITLE XI—THE COURT AND CLERK

Rule 77. Sessions of the Court

(a) Court Always Open. The court shall be deemed always open and in continuous session for transacting judicial business on all business days throughout the year. Emergency matters may be presented to and heard by the court at any time.

(b) Trials and Proceedings—Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers with or without the attendance of the clerk or other court officials.

(c) Place of Trials or Hearings.

(1) In New York City. The judge to whom an action is assigned may designate the date of any trial or hearing to be held in, or continued to, New York City.

(2) Other Than New York City. The chief judge may, as authorized by 28 U.S.C. §§253(b) and 256(a), designate the place and date of any trial or hearing to be held at, or continued to, any place other than New York City within the jurisdiction of the United States.

(3) Foreign Countries. The chief judge may, as authorized by 28 U.S.C. §256(b), authorize a judge to preside at any evidentiary hearing in a foreign country.

(d) Photography, Tape Recording and Broadcasting.

The taking of photographs, or the use of recording devices in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs, in connection with judicial proceedings is prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

Environs as used in this rule, shall include: (1) the entire United States Court of International Trade Courthouse at One Federal Plaza, New York, New York; and (2) any place within the jurisdiction of the United States where a judge may preside at a trial or hearing pursuant to 28 U.S.C. §256(a).

(e) Assignment and Reassignment of Actions.

(1) Assignment to Single Judge. All actions shall be assigned by the chief judge to a single judge, except as prescribed in paragraph (2) of this subdivision (d).

(2) Assignment to Three-Judge Panel. An action may be assigned by the chief judge to a three-judge panel either upon motion, or upon the chief judge's own initiative, when the chief judge finds that the action raises an issue of the constitutionality of an Act of Congress, a proclamation of the President, or an Executive order; or has broad or significant implications in the administration or interpretation of the law.

(3) Time of Assignment. An action shall be assigned by the chief judge at any time upon the chief judge's own initiative or upon motion for good cause shown.

(4) Reassignment. An action may be reassigned by the chief judge upon the death, resignation, retirement, illness or disqualification of the judge to whom it was assigned, or upon other special circumstances warranting reassignment.

(5) Inability of a Judge to Proceed. If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the action may be completed without prejudice

to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(f) Judge and Court—Defined. The word ''judge'' as used in these rules means the single judge or three-judge panel to whom an action is assigned or a matter is referred. The word ''court'' as used in these rules means, unless the context of a particular rule clearly indicates otherwise, the single judge or three-judge panel to whom an action is assigned or a matter is referred.

(As amended Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

PRACTICE COMMENT

To implement the authority conferred upon the chief judge by 28 U.S.C. §§253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, a list of tentative dockets and the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

Rule 77.1. Judicial Conference

(a) Purpose. The chief judge is authorized to summon annually the judges of the court to a judicial conference, at a time and place the chief judge designates, for the purpose of considering the business of the court and improvements in the administration of justice in the court. The chief judge shall preside at the conference.

(b) Composition. All members of the bar of this court may be members of the conference and participate in its discussions and deliberations.

(c) Registration Fee. A registration fee shall be paid by attendees of the conference, and shall be applied to the payment of the expenses of the conference, as approved by the chief judge.

(Added July 21, 1986, eff. Oct. 1, 1986.)

Rule 78. Motion Part

(a) Motion Part—Establishment. A Motion Part is established for hearing and determining all motions in actions which have not been assigned to a judge or proceedings which are not otherwise provided for in these rules.

(b) Motion Part—Referral. The clerk shall refer motions ready for disposition to the Motion Part judge for hearing and determination. The Motion Part judge shall: determine the motion; or refer the motion to another judge who previously determined a related motion in the action; or refer the matter to the chief judge with a recommendation that the action be assigned to a judge.

(c) Motion Part—Emergency Matters.

(1) An emergency matter is one which because of special circumstances requires extraordinary priority and immediate disposition.

(2) The Motion Part judge will be available, on call, to hear and determine an emergency matter at any time.

(3) The clerk shall refer to the Motion Part judge any emergency matter arising in an unassigned action, or in an assigned action when the assigned judge is unavailable.

(4) The Motion Part judge shall dispose of the emergency matter only to the extent necessary to meet the emergency, and the action shall otherwise be continued for disposition by the judge to whom the action has been or will be assigned.

(5) If the Motion Part judge decides that an emergency matter should not be determined, for lack of emergency or other reason, he shall refer the matter for determination in the ordinary course.

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) Civil Docket. The clerk shall keep a book known as a ''Civil Docket,'' on one or more looseleaf sheets for each action, and shall enter therein each action filed with the court. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the sheet of the Civil Docket whereon the first entry of the actions is made. All papers filed with the clerk and all judgments and orders shall be entered chronologically in the Civil Docket on the sheet assigned to the action and shall be marked with its file number. These entries shall be brief, but shall show the nature of each paper filed and the substance of each judgment or order. The entry of an order or judgment shall show the date the entry is made. When in an action, trial by jury has been properly demanded or ordered, the clerk shall enter the word ''jury'' on the sheet assigned to that action.

(b) Judgments and Orders. The clerk shall keep as a permanent record a ''Judgment and Order Book'' in which there shall be filed, in serially-numbered chronological sequence in looseleaf binders, a correct copy of every final judgment or appealable order, together with all opinions, decisions, or findings of fact and conclusions of law upon which it is based, and any other order which the court may direct to be kept. Every such final judgment or appealable order shall, from time to time but no less frequently than annually, be permanently bound.

(c) Notice of Orders or Judgments.

(1) Immediately upon the entry of an order the clerk shall serve a notice of the entry, together with a copy of the order and any accompanying memorandum, by delivery or mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the delivery or mailing. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

(2) Immediately upon the entry of a judgment the clerk shall serve a notice of the entry, together with a copy of the judgment, opinion, decision, or findings of fact and conclusions of law upon which it is based, by delivery or mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and, if appropriate, the district director of the customs district in which the action arose, and shall make a note in the docket of the delivery or mailing. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

(3) Lack of notice of the entry by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure or by the rules of the United States Court of Appeals for the Federal Circuit.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 80. Papers, Exhibits and Other Material

(a) Custody and Control. All papers, exhibits and other material filed with or transmitted to the court shall be retained by the clerk of the court, under the clerk's custody and control except when required by the court. When requested by an attorney for a party, papers, exhibits and other material may be transmitted by the clerk to an appropriate customs officer. Notice of the request shall be given to all other parties by the party filing the request.

(b) Inspection. Any person may inspect all papers, exhibits and other material in an action except where restricted by statute or by order of the court. Unless otherwise directed by the court, entry papers, invoices and laboratory reports shall be available only to the party to whose merchandise the papers, invoices and reports relate, or to the attorney of record for that party, or to an attorney for the United States, or an officer of the United States Customs Service.

(c) Withdrawal.

(1) Any person may withdraw the papers, exhibits and other material, which that person is authorized to inspect as prescribed in subdivision (b) of this rule, to a designated place in the court. The papers, exhibits and other material shall be returned to the office of the clerk no later than the close of business on the day of withdrawal. Upon request of a party, the clerk may permit papers, exhibits and other material to be withdrawn to a designated place in the offices of the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, for not more than 30 days, provided that they shall be returned immediately to the office of the clerk upon notice from the clerk.

(2) Whenever any person withdraws papers, exhibits and other material, that person shall sign and leave with the clerk a receipt describing what has been withdrawn.

(d) Return and Removal. When a judgment or order of the court has become final, papers, exhibits, and other material transmitted to the court pursuant to 28 U.S.C. §2635, shall be returned by the clerk, together with a copy of the judgment or order, to the agency from which they were transmitted. All exhibits shall be removed from the custody of the clerk by the party who filed them within 60 days after the judgment or order of the court has become final. A party who fails to comply with this requirement shall be notified by the clerk that, if the exhibits are not removed within 30 days after the date of the notice, the clerk may dispose of them as the clerk may see fit. Any expense or cost pertaining to the removal of exhibits as prescribed by this rule shall be borne by the party who filed them.

(e) Reporting of Proceedings. Each session of the court and every other proceeding designated by order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, as prescribed by regulations promulgated by the Judicial Conference of the United States and subject to the discretion and approval of the judge. Proceedings to be recorded include: all proceedings in open court unless the parties, with the approval of the judge, shall agree specifically to the contrary; and such other proceedings as a judge may direct, or as may be required by rule or order of the court, or as may be requested by any party to the proceeding. The court reporter or other individual designated to produce the record shall attach an official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk of the court who shall preserve them in the public records of the court for not less than ten years.

(f) Transcript of Proceedings. The court reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by rule or order of the court or direction of a judge. Upon the request of any party to the proceeding which has been so recorded, who has agreed to pay the fee therefor, or of a judge of the court, the court reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript an official certificate, and deliver the certified transcript to the clerk of the court for the public records of the court. The certified transcript in the Office of the Clerk shall be open during office hours to inspection by any person without charge, except where restricted by statute or order of the court.

(g) Fees.

Except as otherwise provided by these rules, the clerk shall collect in advance from the parties such fees for services as are consistent with the ''Judicial Conference Schedule of Additional Fees for the United States District Courts.''

(1) Reproductions. Reproductions of original records may be given to any person who is authorized to inspect original records as prescribed in subdivision (b) of this rule.

(2) Transcripts. The clerk of the court may require any party requesting a transcript to prepay the estimated fee in advance except for transcripts that are to be paid for by the United States.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Jan. 1, 1983; July 28, 1988, eff. Nov. 1, 1988.)

PRACTICE COMMENT

From time to time, the Judicial Conference of the United States establishes fees for services performed by the clerk. The rates applicable at any time are available, upon request, from and are posted in the Office of the Clerk.

CROSS REFERENCES

Schedule of fees, see note set out under section 2633 of this title.

Rule 81. Papers Filed—Conformity—Form, Size, Copies

(a) Conformity Required. All papers filed with the court shall be produced, duplicated, and filed in conformity with these rules as to means of production, methods of duplication, form and size, and number of copies.

(b) Means of Production. All papers shall be plainly and legibly typewritten or otherwise produced by any duplicating or copying process.

(c) Caption and Signing. All papers shall bear a caption in conformity with Rule 7 and shall be signed in conformity with Rule 11.

(d) Numbering of Pages. The pages of each paper shall be numbered consecutively, commencing with the number 1.

(e) Designation of Originals. When multiple copies of a paper are filed, one shall be designated as the original by the party.

(f) Pleadings and Other Papers. Unless otherwise provided by these rules, all papers shall be filed in duplicate, only the original of which need be signed. Pleadings and other papers shall be 8½ by 11 inches in size, with typed matter not exceeding 6½ x 9½ inches, and with type size of 11 points or larger, including type used in footnotes. Pages shall be numbered on the bottom portion thereof and bound or attached on the top margin. Typed matter shall be double spaced except footnotes, which may be single spaced, quoted material which may be indented and single spaced, and titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(g) Status of Action. Papers filed after an action has been commenced shall identify, with respect to each action affected by the papers, the court number assigned to the action, the court calendar on which the action is listed; and, if the action has been assigned, the name of the judge to whom the action has been assigned or reassigned.

(h) Confidential Information.

(1) If a party deems it necessary to refer in a pleading, motion, brief or other paper to confidential or privileged information, two sets of the pleadings, motions, briefs or other papers shall be filed.

(a) Confidential Set. One set of the pleadings, motions, briefs or other papers shall be labeled ''Confidential'' on the cover page and be filed with the clerk of the court. In addition, each page containing confidential material shall bear a legend so indicating.

(b) Nonconfidential Set. The second set of pleadings, motions, briefs or other papers shall be labeled ''Nonconfidential'' on the cover page and be filed with the clerk of the court. In addition, each page of the ''nonconfidential'' set from which confidential or privileged information has been deleted shall bear a legend so stating.

(2) Each party to the action shall be served with one copy of the ''nonconfidential'' pleading, motion, brief or other paper, and, when permitted by an applicable protective order, one copy of the ''confidential'' pleading, motion, brief or other paper, in accordance with Rule 5.

(3) Non-Availability to the Public. The ''confidential'' set of pleadings, motions, briefs or other papers filed with the court shall be available only to authorized court personnel and shall not be made available to the public.

(i) Briefs—Trial and Pretrial Memoranda. Briefs, trial and pretrial memoranda shall be filed in duplicate and shall be 8½ by 11 inches in size. Pages shall be numbered on the bottom portion thereof and bound or attached on the left margin. Typed matter shall be double spaced, except quoted material which may be indented and single spaced, and except titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(j) Content—Moving Party's Brief. The brief of the moving party shall contain under proper headings and arranged in the following order:

(1) a table of contents;

(2) a table of statutes, regulations, and cases cited, giving the volume and page in the official editions where they may be found, and arranging the cases in alphabetical order;

(3) in an action involving a specific importation, a brief description of the merchandise, country of origin and of exportation, date of exportation, date of entry, and port of entry;

(4)(A) in actions involving classification, the verbatim paragraph or paragraphs or item or items of the tariff statute under which the merchandise was assessed, and the verbatim paragraph or paragraphs or item or items under which it is claimed that the merchandise is properly dutiable, together with any other verbatim pertinent statutory provisions or regulations; (B) in actions involving valuation, the statutory basis of appraisement and the unit of value at which the merchandise was appraised, and the claimed statutory basis of value and unit of value, together with the verbatim pertinent statutory provisions;

(5) the questions presented for decision, including all subsidiary questions involved; when a brief is filed under Rule 56.2, the issues shall be presented in accordance with Rule 56.2(c)(1)(B), and need not be restated under this paragraph (5);

(6) a concise statement of facts relevant to the issues with a specific citation to the page or pages in the record or exhibits supporting each such material fact;

(7) a summary of argument, which shall be succinct, but accurate and clear, condensation of the contentions made in the body of the brief;

(8) an argument, exhibiting clearly the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, exhibits, and pages of the record relied upon;

(9) a short conclusion stating the relief sought.

(k) Content—Respondent's Brief. The brief of the respondent shall conform to the requirements prescribed in subdivision (j) of this rule, except that no statement of the facts need be made beyond what may be deemed necessary to correct any inaccuracies or omissions in the moving party's brief, and except that items (3), (4) and (5) need not be included unless the respondent is dissatisfied with their presentation by the moving party.

(*l*) Content—Reply Brief. A reply brief shall be confined to rebutting matters contained in the brief of the respondent.

(m) General. Briefs must be compact, concise, logically arranged, and free from burdensome, irrelevant, immaterial and scandalous matter. Briefs not complying with this rule may be disregarded by the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Nov. 29, 1995, eff. Mar. 31, 1996; May 27, 1998, eff. Sept. 1, 1998.)

PRACTICE COMMENT

All decisions of the United States Court of International Trade are published in: slip opinion form; the Customs Bulletin; and the official reports of the United States Court of International Trade. Certain decisions will also be published in the Federal Supplement or the Federal Rules Decisions.

The rules of citation for papers filed in the court are as follows:

1. *Slip Opinions*

When citing a slip opinion, one should cite the slip opinion number, together with the volume number of the official reports, if available, and full date of publication. This form is used until the opinion appears in full in the *United States Court of International Trade Reports* (CIT).

Examples

Carlisle Tire and Rubber Co. v. United States, 5 CIT ____, Slip Op. 83–43 (May 18, 1983);

OR, if the volume number is not available,

____ CIT ____, Slip Op. 83–43 (May 18, 1983).

2. *Published Opinions*

After an opinion appears in the official CIT reports, *Federal Supplement* (F.Supp.), or *Federal Rules Decisions* (F.R.D.), the slip opinion is no longer used, and the citation is to the official reports, and unofficial reports, if available, together with the year of publication. One should not cite the *Customs Bulletin and Decisions* in any event.

Example

American Shack Co. v. United States, 1 CIT 1 (1980).

If the opinion is also published in F.Supp. or F.R.D., citation of these reporters should follow the citation of the official reports.

Examples

Zenith Radio Corp. v. United States, 1 CIT 53, 505 F.Supp. 216 (1980) [or 99 F.R.D. 100 (1980)];

NOT,

1 CIT 53, Slip Op. 80–10, 505 F.Supp. 216 (1980).

3. *Customs Court Opinions*

The form of citation for opinions of the United States Customs Court remains the same.

Examples

Labay Int'l, Inc. v. United States, 83 Cust. Ct. 152, C.D. 4834 (1979);

OR, if there is a F.Supp. or F.R.D. cite,

Alberta Gas Chems., Inc. v. United States, 84 Cust. Ct. 217, C.R.D. 80–1, 483 F.Supp. 303 (1980).

4. *Abstracts*

Abstracts of decisions not supported by an opinion should be numbered, published, and cited. These abstracts include decisions and judgments on agreed statements of facts, on motions for summary judgments, and on motions for judgments on the pleadings in only classification and valuation cases.

Examples

Uniroyal, Inc. v. United States, 84 Cust. Ct. 275, Abs. P80/59 (1980);

Nichimen Co. v. United States, 1 CIT 234, Abs. R81/20 (1981).

5. *Decisions of the Board of General Appraisers*

Citation of the decisions of the Board of General Appraisers should be as follows:

Example

In re Pickhardt & Kuttroff, T.D. 20,728, 1 Treas. Dec. 373 (1897).

6. *Court of Customs Appeals Opinions*

Citation of the opinions of the Court of Customs Appeals (Ct. Cust. App.) should be as follows:

Example

Kahlen v. United States, 2 Ct. Cust. App. 206 (1911).

7. *Court of Customs and Patent Appeals*

Citation of opinions of the Court of Customs and Patent Appeals (CCPA) should be as follows:

Examples

Coro, Inc. v. United States, 41 CCPA 215, C.A.D. 554 (1954);

OR, if there is an F.2d cite,

United States v. Mabay Chem. Corp., 65 CCPA 53, C.A.D. 1206, 576 F.2d 368 (1978).

8. *Court of Appeals for the Federal Circuit*

Due to the discontinuation of the CCPA Reports, all Federal Circuit opinions should be by F.2d cite or, if not available, by case number unless the Federal Circuit decides to publish its opinions in a successor to the CCPA reporter.

Examples

Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380 (Fed. Cir. 1983),

OR, if the F.2d cite is not available,

Jarvis Clark Co. v. United States, No. 83–1106 (Fed. Cir. May 2, 1984);

NOT,

Jarvis Clark Co. v. United States, Appeal No. 83–1106, Slip Op. (C.A.F.C. May 2, 1984).

9. *Statutes*

Citation of statutes of the United States should include both the popular name of the act and the title and section of the United States Code.

a) Citation of a statute as it appears in a sentence in text.

Example

Plaintiff moves for certification pursuant to section 222(3) of the Trade Act of 1974, 19 U.S.C. §2272(3) (1982).

b) Citation standing alone.

Example

Trade Act of 1974, §222(3), 19 U.S.C. §2272(3) (1982).

10. *Rules*

Citation of the rules of this court and its predecessor court, the Customs Court, should be as follows:

a) Rules of the United States Court of International Trade

Example

USCIT R. 56

b) Rules of the United States Customs Court

Example

Cust. Ct. R. 4.6

11. *Miscellaneous*

Ellipsis (. . .)

Pursuant to rule 5.3 of *A Uniform System of Citation*, when a word or words are omitted from quoted material it should be indicated by an ellipsis (. . .), and not asterisks (* * *).

For further rules of citation, reference may be made to *A Uniform System of Citations* (The Harvard Law Review Association). For punctuation, capitalization, abbreviations, and other matters of style, reference may be made to the *U. S. Government Printing Office Style Manual*. Assistance in citing recent decisions of this court may be obtained from the court librarian (212–264–2816).

The court has established Security Procedures for Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to confidential information or privileged information received by the court and may include: trade secrets, commercial or financial information, and information

provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of the Security Procedures regulates the transmittal of confidential information to and from the clerk by government agencies and private parties. A copy of Section 11(a) is available upon request from, and is posted in, the Office of the Clerk.

Compliance with Rule 81 is encouraged because it will facilitate review of papers by the court. Pursuant to Rule 82(d), the clerk may refuse to accept any paper presented for filing because it does not comply with the procedural requirements of the rules or practice of the court. Additionally, a judge may reject nonconforming papers or take other appropriate action if it is determined that such action is warranted.

For an action under 28 U.S.C. §1581(c), Rule 5(h) contains requirements for designating of business proprietary information and the form of notification required when a party desires to delay filing a non-confidential version of a submission by one business day.

Rule 82. Clerk's Office and Orders by the Clerk

(a) Business Hours and Address. The office of the clerk shall be open between 8:30 a.m. and 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays,[1] at:

Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, NY 10278–0001
(212) 264–2800

(b) Motions, Orders and Judgments. The clerk may dispose of the following types of motions and sign the following types of orders and judgments without submission to the court, but the clerk's action may be suspended, altered or rescinded by the court for good cause shown:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the action.

(3) Orders of dismissal upon notice as prescribed by Rules 41(a)(1) and 41(b)(3).

(4) Orders of dismissal for lack of prosecution as prescribed by Rules 83(c) and 85(d).

(5) Consent motions to intervene as of right made within the 30-day period provided in Rule 24(a).

(6) Orders of dismissal for failure to file a complaint as prescribed by Rule 13(i)(4).

(7) Orders of dismissal for failure to file a complaint as prescribed by Rule 41(b)(2).

(c) Clerk—Definition. The words ''clerk'' or ''clerk of the court'' as used in these rules include a deputy clerk designated by the clerk to perform services of the kind provided for in these rules.

(d) Filing of Papers. The clerk shall date-stamp any paper submitted for filing upon receipt, whether or not that paper is accepted for filing. In unassigned actions, the clerk shall not accept for filing any paper which does not comply with the rules of the court unless such noncompliance is purely a matter of form. If the rejection of the paper may have jurisdictional consequences, that rejection shall be at the direction of the chief judge. In assigned actions, rejection by the clerk shall be at the direction of the judge to whom the action is assigned.

A party aggrieved by the clerk's refusal to accept a paper for filing may move to compel acceptance. If a paper initially rejected by the clerk later is accepted for filing, the date on which the paper initially was stamped shall be considered the date of filing, although the date may be subject to amendment pursuant to Rule 5(e).

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998.)

PRACTICE COMMENT

Included among, but not limited to, the kinds of papers the clerk may refuse to accept for filing are: a reply to a response to a non-dispositive motion without leave of court; a pleading that is not accompanied by the appropriate filing fee; discovery documents presented contrary to Rule 5(d); papers that are not signed as required by Rule 11; papers presented by an attorney who is not the attorney of record; and, papers presented after the running of periods prescribed by the rules or orders of the court.

TITLE XII—COURT CALENDARS

Rule 83. Reserve Calendar

(a) Reserve Calendar. A Reserve Calendar is established on which an action described in 28 U.S.C. §1581(a) or (b) is commenced by the filing of a summons shall be placed when the action is commenced. An action may remain on the Reserve Calendar for an 18-month period. The applicable 18-month period shall run from the last day of the month in which the action is commenced until the last day of the 18th month thereafter.

(b) Removal. An action may be removed from the Reserve Calendar upon (1) assignment, (2) filing of a complaint, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under a test case pursuant to Rule 84, or (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1.

(c) Dismissal for Lack of Prosecution. An action not removed from the Reserve Calendar within the 18-month period shall be dismissed for lack of prosecution and the clerk shall enter an order of dismissal without further direction from the court unless a motion is pending. If a pending motion is denied and less than 10 days remain in which the action may remain on the Reserve Calendar, the action shall remain on the Reserve Calendar for 10 days from the date of entry of the order denying the motion.

(d) Extension of Time. For good cause shown why the action was not removed within the 18-month period, the court may grant an extension

[1] As used in these rules, ''legal holidays'' include: New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and any other day designated as a holiday by the President or the Congress of the United States.

of time for the action to remain on the Reserve Calendar. A motion for an extension of time shall be made at least 30 days prior to the expiration of the 18-month period.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 84. Suspension Calendar

(a) Suspension Calendar. A Suspension Calendar is established on which an action described in 28 U.S.C. §§1581(a) and (b) may be suspended, by order of the court, pending the final determination of a test case.

(b) Test Case Defined. A test case is an action, selected from a number of other pending actions all involving a significant issue of fact or question of law that is the same, and which is intended to proceed first to final determination to serve as a test of the right to recovery in the other actions. A test case may be so designated by order of the court upon a motion for test case designation after issue is joined.

(c) Motion for Test Case Designation. A party who intends that an action be designated a test case shall: (1) consult with all other parties to the action in accordance with Rule 7(b), and (2) serve upon the other parties, and file with the court a motion requesting such designation. The motion for test case designation shall include a statement that the party: (1) intends to actively prosecute the test case once designated, and (2) has other actions pending before the court that involve the same significant issue of fact or question of law as is involved in the test case and that it will promptly suspend under the test case. In any instance in which the consent of all other parties has not been obtained, a nonconsenting party shall serve and file its response within 10 days after service of the motion for test case designation, setting forth its reasons for opposing.

(d) Suspension Criteria. An action may be suspended under a test case if the action involves a significant issue of fact or a question of law which is the same as a significant issue of fact or question of law involved in the test case.

(e) Motion for Suspension. A motion for suspension shall include, in addition to the requirements of Rule 7, (1) the title and court number of the action for which suspension is requested, (2) the title and court number of the test case, and (3) a statement of the significant issue of fact or question of law alleged to be the same in both actions.

(f) Time. A motion for suspension may be made at any time, and may be joined with a motion for designation of a test case as prescribed by subdivision (b) of this rule.

(g) Effect of Suspension. An order suspending an action shall stay all further proceedings and filing of papers in the suspended action unless the court otherwise directs.

(h) Removal From Suspension. A suspended action may be removed from the Suspension Calendar only upon a motion for removal. A motion for removal may be granted solely for the purpose of moving the action toward final disposition. An order granting a motion for removal shall specify the terms, conditions and period of time within which the action shall be finally disposed.

(As amended Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 85. Suspension Disposition Calendar

(a) Suspension Disposition Calendar. A Suspension Disposition Calendar is established on which an action which was suspended under a test case shall be placed after the test case is finally determined, dismissed or discontinued.

(b) Time—Notice. The court shall notify the parties when a test case has finally been determined, dismissed or discontinued. After consultation with the parties, the court shall then enter an order providing for a period of time for the removal of an action from the Suspension Disposition Calendar.

(c) Removal. An action may be removed from the Suspension Disposition Calendar upon: (1) filing of a complaint, (2) filing of a demand for an answer when a complaint previously was filed, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under another test case pursuant to Rule 84, (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1, (6) granting of a dispositive motion, (7) filing of a request for trial, or (8) granting of a motion for removal.

(d) Dismissal for Lack of Prosecution. An action not removed from the Suspension Disposition Calendar within the established period shall be dismissed for lack of prosecution, and the clerk shall enter an order of dismissal without further direction of the court, unless a motion is pending. If a pending motion is denied and less than 10 days remain in which the action may remain on the Suspension Disposition Calendar, the action shall remain on the Suspension Disposition Calendar for 10 days from the date of entry of the order denying the motion.

(e) Extension of Time. For good cause shown why the action was not removed within the period established by the court for the Suspension Disposition Calendar, the court may grant an extension of time for the action to remain on the Suspension Disposition Calendar. A motion for an extension of time shall be made at least 30 days prior to the expiration of the established period.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 86. [Reserved]

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 87. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 88. Title

These rules may be known and cited as the Rules of the United States Court of International Trade.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 89. Effective Date

(a) Effective Date of Original Rules. These rules shall take effect on November 1, 1980, the effective date of the Customs Courts Act of 1980. They govern all proceedings in actions commenced thereafter and then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work an injustice, in which event the former procedure applies. However, when a party is required or has been requested prior to the effective date of these rules to perform an act, pursuant to the Rules of the United States Customs Court in effect prior to the effective date of these rules, the act may still be performed in accordance with the rules in effect prior to the effective date of these rules.

(b) Effective Date of Amendments. The amendments adopted by the court on November 4, 1981, shall take effect on January 1, 1982. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) Effective Date of Amendments. The amendment adopted by the court on December 29, 1982, shall take effect on January 1, 1983. It governs all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former procedure applies.

(d) Effective Date of Amendments.

(1) The amendments adopted by the court on October 3, 1984, shall take effect on January 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except as provided for in paragraph (2) of this subdivision.

(2)(A) Rule 16 shall apply to all actions assigned on or after the effective date of these amendments and may apply to any action assigned before the effective date at the discretion of the judge to whom the action is assigned.

(B) As to pending actions, the amendments apply, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure applies.

(e) Effective Date of Amendments. The amendments adopted by the court on June 19, 1985, shall take effect on October 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(f) Effective Date of Amendments. The amendments adopted by the court on July 21, 1986, shall take effect on October 1, 1986. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(g) Effective Date of Amendments. The amendments adopted by the court on December 3, 1986, shall take effect on March 1, 1987. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(h) Effective Date of Amendments. The amendments adopted by the court on April 28, 1987, shall take effect on June 1, 1987. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(i) Effective Date of Amendments. The amendments adopted by the court on July 28, 1988, shall take effect on November 1, 1988. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(j) Effective Date of Amendments. The amendments adopted by the court on October 3, 1990, shall take effect on January 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(k) Effective Date of Amendments. The amendments adopted by the court on March 1, 1991, shall take effect on March 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(*l*) Effective Date of Amendments. The amendments adopted by the court on September 25, 1992, shall take effect on January 1, 1993. They govern all proceedings in actions brought after

they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(m) Effective Date of Amendments. The amendments adopted by the court on October 5, 1994, shall take effect on January 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(n) Effective Date of Amendment. The amendment to the court's Schedule of Fees adopted June 1, 1995 shall take effect on June 1, 1995. It shall govern all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former schedule applies.

(*o*) Effective Date of Amendments. The amendments adopted by the court on November 29, 1995 shall take effect on March 31, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(p) Effective Date of Amendments. The amendments adopted by the court on August 29, 1997 shall take effect on November 1, 1997. They govern all proceedings in actions brought on or after they take effect.

(q) Effective Date of Amendments. The amendments adopted by the court on November 14, 1997 shall take effect on January 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(r) Effective Date of Amendments. The amendments adopted by the court on March 25, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(s) Effective Date of Amendments. The amendments adopted by the court on May 27, 1998 shall take effect on September 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Dec. 29, 1982, eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; June 1, 1995, eff. June 1, 1995; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; Nov. 14, 1997, eff. Jan. 1, 1998; Mar. 25, 1998, eff. July 1, 1998; May 27, 1998, eff. Sept. 1, 1998.)

APPENDIX OF FORMS

Forms		Rule
1	Summons in 28 U.S.C. §1581(a)	3(a)(1)
1A	Notice of Lawsuit and Request for Waiver of Service of Summons	4(d)
1B	Waiver of Service of Summons	4(d)
2	Summons in 28 U.S.C. §1581(b)	3(a)(1)
3	Summons in 28 U.S.C. §1581(c)	3(a)(2)
4	General Summons	3(a)
5	Information Statement	3(b)
6	Request for Trial	40(a)
7	Notice of Dismissal	41(a)(1)(A)
8	Stipulation of Dismissal	41(a)(1)(B)
9	Stipulated Judgment on Agreed Statement of Facts	58.1
10	Application for Admission to Practice	74(b)
11	Notice of Appearance	75(b)(2)
12	Substitution of Attorney	75(c)
13	Disclosure of Corporate Affiliations and Financial Interest	Practice Comment to Rules 3, 24, 76
14	Reserved.	
15	Application for Fees and Other Expenses Pursuant to the Equal Access to Justice Act. 28 U.S.C. §2412(d), Title II of Public Law 96–481, 94 STAT. 2325 and USCIT R. 68	68

General Instructions

1. The forms contained in this Appendix of Forms are intended for use as samples, except for those forms which, when required, are to be obtained from the office of the clerk, *viz.*, Forms 5, 10 and 13.

2. No attempt is made to furnish a manual of forms; and the forms are limited in number. For other forms, reference may be made when appropriate to the Appendix of Forms to the Federal Rules of Civil Procedure.

3. Except when otherwise indicated, each pleading and other paper must have a caption similar to that of the summons, with the designation of the particular paper substituted for the word, ''Summons.''

4. In the caption of the summons and of the complaint, all parties must be named; but in other pleadings and papers, it is sufficient to name the first party on either side, with an appropriate indication of other parties.

5. A motion must contain a designation below the caption indicating the nature of the motion, e.g., ''DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.'' A response to a motion, or a reply to a response when allowed, must contain a similar designation.

6. Papers filed after an action is commenced must set out to the right of the caption: the court number assigned to the action; the court calendar (Reserve, Suspension, or Suspension Disposition Calendar) on which the action is listed; and, if the action has been assigned, the name of the judge to whom it is assigned.

7. Each pleading or other paper is to be signed in the attorney's individual name by at least one attorney of record. The attorney's name is to be followed by the attorney's mailing address and telephone number. If the attorney of record is a firm of attorneys, the firm name, and the name of the individual attorney responsible for the litigation, must appear on every pleading or other paper. A party represented by more than one attorney of record must designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party. If an individual is not represented by an attorney, the signature, mailing address, and telephone number of the individual are required in place of those of an attorney.

8. When a summons, pleading or other paper includes a schedule of actions, the schedule must:

a. not list both assigned and unassigned actions;
b. not include actions assigned to more than one judge;
c. list the actions in numerical order;
d. indicate the court calendar, if any, in which the action is pending; and
e. list the protest or customs numbers in numerical order.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 23, 1993, eff. July 23, 1993.)

Specific Instructions

Form 1

This form of summons is to be used only in those actions described in 28 U.S.C. §1581(a).

The summons must be filed together with a $120 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of three pages. The first page is to be completed with the required information pertaining to the denied protest. The second page is to be completed with the required information pertaining to the administrative decision contested in the action. The third page is to be completed with a schedule of protests, listed in numerical order, when more than one denied protest is included in the action.

When the action includes protests denied at one port of entry, the original and four copies of the summons must be filed. When the action includes protests denied at more than one port of entry, an additional copy of the summons must be filed at the same time for the protests denied at each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 1A

A Notice of Lawsuit and Request for Waiver of Service of Summons which, as previously prescribed by Rule 4(d), shall be addressed directly to a defendant and sent by first-class mail or other reliable means. The defendant shall be allowed a reasonable period of time to return the waiver (Form 1B).

Plaintiff shall provide the defendant with a stamped and addressed return envelope. Plaintiff also shall provide the defendant with a copy of the waiver for defendant's records.

Upon receipt of the signed waiver, plaintiff shall file the waiver with the court.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district in the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 1B

A Waiver of Service of Summons which, as prescribed by Rule 4(d), shall be returned to a plaintiff who has requested a defendant to waive service.

If a defendant, after being notified of an action and asked to waive service, fails to do so, that defendant will be required to bear the cost of service unless good cause can be shown for its failure to sign and return the waiver.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district of the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 2

This form of summons is to be used only in those actions described in 28 U.S.C. §1581(b).

The summons must be filed together with a $120 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of two pages. The first page is to be completed with the required information pertaining to the entry involved in the action. The second page is to be completed with the required information pertaining to the administrative decision contested in the action.

When the action includes entries involving one consignee and one port of entry, the original and five copies of the summons must be filed. When the action includes entries involving more than one consignee or more than one port of entry, an additional copy of the summons must be filed at the same time for each such additional consignee and each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 3

This form of summons is to be used only in those actions described in 28 U.S.C. §1581(c). It is to be used both: (1) when the action is commenced by filing a summons only (i.e., to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930); and (2) when the action is commenced by filing concurrently a summons and a complaint (i.e., to contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930).

The summons must be filed together with a $120 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

When the clerk of the court is required to make service of the summons (i.e., those actions commenced by filing a summons only), the original and one copy of the summons must be filed with an additional copy for each defendant to be served; and the back of the summons must list the complete name and mailing address of each defendant to be served.

When the plaintiff is required to make service of the summons (i.e., those actions commenced by filing concurrently a summons and a complaint), the original and one copy of the summons must be filed with proof of service. Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 23, 1993, eff. July 23, 1993.)

Form 4

This form of summons is to be used in all actions other than those actions in which the form of summons to be used is Form 1, 2, or 3.

The original and one copy of the summons must be filed with proof of service, a $120 filing fee, except that a $25 filing fee shall be paid when the action is one described in 28 U.S.C. §1581(d)(1), a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13). Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 5

The Information Statement, which must be filed when an action is commenced, is a form available from the office of the clerk. The original and one copy of the completed Information Statement must be filed.

The information supplied by a plaintiff on an Information Statement is to be used solely for administrative purposes by the office of the clerk, and is not to be used to supply, modify, limit or expand information otherwise required to be supplied, or contained in the summons, pleadings or other papers.

Form 6

The original and one copy of a Request for Trial must be filed after service as prescribed in Rule 40(a).

After receipt of a Request for Trial and any opposition to the request, the court will designate the date and place for trial. As prescribed in Rule 77(c), the judge to whom the action is assigned will designate the date of the trial to be held at, or continued to, New York City; and the chief judge will designate the place and date of the trial to be held at, or continued to, any place other than New York City.

After receipt of a request for a trial at a place other than New York City and any opposition to the request, the chief judge may issue an order. The order, which will set the place and date of, and designate a judge to preside at, the trial will be issued to the parties by the clerk of the court at least 15 days before the scheduled date, or such shorter time as the chief judge may deem reasonable.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 7

A Notice of Dismissal which, as prescribed by Rule 41(a)(1)(A), may be filed by plaintiff at any time before service of an answer or motion for summary judgment, must be substantially in the form set forth in Form 7, and must include for each action noticed for dismissal: the court number; the court calendar (Reserve, Suspension, or Suspension Disposition Calendar); the customs number or the protest number; and the port of entry.

A Notice of Dismissal may include, on an attached schedule, more than one action, provided that all the actions listed on the schedule are pending in the same court calendar and arose from the same port of entry. When more than one port of entry is involved in the action, an

additional copy of the notice of dismissal, together with a separate schedule, must be filed for each additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 8

A Stipulation of Dismissal which, as prescribed by Rule 41(a)(1)(B), may be filed by plaintiff, must be substantially in the form set forth in Form 8, and must include for each action stipulated for dismissal: the court number; the court calendar (Reserve, Suspension, or Suspension Disposition Calendar); the customs number or the protest number; and the port of entry.

A Stipulation of Dismissal may include, on an attached schedule, more than one action, provided that all the actions listed on the schedule are pending in the same court calendar and arose from the same port of entry. When more than one port of entry is involved in the action, an additional copy of the stipulation of dismissal, together with a separate schedule, must be filed for each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 9

As prescribed in Rule 58.1, an action described in 28 U.S.C. §1581(a) or (b) may be stipulated for judgment on an agreed statement of facts.

The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in Form 9, with appropriate additions and deletions if the action does not involve valuation or classification. The proposed stipulated judgment on agreed statement of facts shall be filled out in accordance with the Endnotes found following Form 9.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 23, 1993, eff. July 23, 1993.)

Form 10

An Application for Admission to Practice, which is prescribed by Rule 74(b)(1), shall be completed and filed with the clerk of the court. The application shall be substantially in the form set forth in Form 10. The application shall include the name, the residential address, and the office address of the applicant, and the name and address of the applicant's employer.

The application must be filed with a $50 admission fee. In addition to the fee, the applicant must file (1) the statement of the sponsoring attorney, who is a member of the bar of this court or of the bar of the Supreme Court of the United States, or in the alternative (2) a certificate of a judge or a clerk of any of the courts specified in Rule 75(a). This certificate shall state that the applicant is a member in good standing of the bar of that court.

(Added July 23, 1993, eff. July 23, 1993; amended Mar. 25, 1998, eff. July 1, 1998.)

Form 11

A Notice of Appearance which, as prescribed by Rule 75(b)(2), shall be served by an attorney authorized to appear in the action. The attorney shall serve a separate notice for each action. The notice shall be served in all instances except those specified in Rule 75(b)(1). The notice shall be substantially in the form set forth in Form 11.

An appearance may be made by an individual attorney or by a firm of attorneys. If an appearance is made by a firm of attorneys, the individual attorney responsible for the litigation shall be designated. The notice should include the name of the attorney, and the name, address and telephone number of the firm.

Whenever there is any change in the name of an attorney of record, the attorney's address or telephone number, a new notice of appearance for each action shall be promptly served upon the other parties and filed with the court. The notice shall be substantially in the form as set forth in Form 11.

(Added July 23, 1993, eff. July 23, 1993.)

Form 12

A Notice of Substitution of Attorney which, as prescribed by Rule 75(c), must be served by the party desiring to substitute an attorney. The service must be to the prior attorney of record and to all other parties. The notice shall be substantially in the form set forth in Form 12.

The notice should include the name of the substituted attorney, the prior attorney of record, and shall be signed by the substituting party. The notice also shall include a notice of appearance by the substituted attorney.

(Added July 23, 1993, eff. July 23, 1993.)

Form 13

A Disclosure of Corporate Affiliation and Financial Interest which, as prescribed by 28 U.S.C. §455, must be made when a corporation is a party to any action and the corporation is a subsidiary or affiliate of any publicly-owned American or foreign corporation not named in the action. The attorney of record must notify the clerk of the court in writing of the identity of the parent or affiliate corporation and the relationship of the party and the parent or affiliate corporation.

A Disclosure must be made in all actions described in 28 U.S.C. §1581. In an action described in 28 U.S.C. §1581(a) or (b), the attorney of record for the plaintiff also shall notify the clerk of the court in writing of the identity of the ultimate consignee or real party in interest if different from the named plaintiff.

A Disclosure must be made when a trade association is a party to the action. The attorney for the trade association shall notify the clerk of the court in writing of the identity of each publicly-owned American or foreign member of the trade association.

If any trade association or corporate party seeks to intervene or appear as *amicus curiae*, the entity's attorney is also required to comply with the notification requirements set forth above.

The required disclosure notification shall be made on Form 13. The form will be provided by the office of the clerk of the court when the first pleading or other paper is filed by a party or when a motion to intervene or appear as *amicus curaie* is filed.

(Added July 23, 1993, eff. July 23, 1993.)

Form 14

Reserved.

(As added July 23, 1993, eff. July 23, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 15

An Application for Attorney's Fees and Other Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d) and Rule 68, must be filed within 30 days after the date of entry by the court of a final judgment.

The Application for Attorney's Fees and Expenses shall be substantially in the form set forth in Form 15. As prescribed by Rule 68, the application shall contain a citation to the authority which authorizes an award. The application shall indicate the manner in which the prerequisites for an award have been fulfilled. Each application shall also contain a statement, under oath, which specifies (1) the nature of each service rendered; (2) the amount of time expended in rendering each type of service; and (3) the customary charge for each type of service rendered.

(Added July 23, 1993, eff. July 23, 1993.)

Form 16

An Order of Deposit and Investment directing the clerk to deposit money in an interest-bearing account, which as prescribed by Rule 67.1, shall be filed by delivery or by certified mail, return receipt requested, with the clerk or financial deputy who will inspect the proposed order for proper form and content prior to signature by the judge for whom the proposed order was prepared. The proposed order shall be substantially in the form set forth in Form 16.

Any proposed order that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. §2401 also shall contain all information in accordance with Rule 67.1(b).

(Added July 23, 1993, eff. July 23, 1993.)

Complaint Allegations

The forms of allegations set out below are intended to indicate the allegations which should be included in the particular civil actions.

Actions Described in 28 U.S.C. §1581(a) or (b)

(a) *General:* The complaint in a civil action should set forth:

(1) a statement of the basis of the court's jurisdiction;

(2) a statement of plaintiff's standing in the action;

(3) a statement that the protest was timely filed;

(4) a statement, when appropriate, that all liquidated duties have been paid;

(5) a description of the merchandise involved;

(6) a specification of the contested customs decision or decisions; and

(7) a demand for judgment for the relief which plaintiff seeks.

(b) *Value:* If the contested customs decision involves the value of merchandise, the complaint should also set forth:

(1) the date and country of exportation;

(2) a statement of the appraised value or values;

(3) a statement of the claimed statutory basis or bases of value;

(4) a statement of the amount or amounts of the unit value claimed to be the correct value or values, or a statement of how the claimed value may be computed; and

(5) concise allegations of plaintiff's contentions of fact and law in support of the above.

(c) *Classification:* If the contested customs decision involves the classification of merchandise, the complaint should also set forth:

(1) the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise was classified, and the rate of duty imposed;

(2) the tariff description and the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise is claimed to be properly subject to classification, and the rate of duty claimed to be applicable; and

(3) concise allegations of plaintiff's contentions of fact and law in support of the above.

(d) *Other:* If the contested customs decision involves any other administrative decision, the complaint should also set forth:

(1) a statement of the nature of the alleged error in the decision; and

(2) concise allegations of plaintiff's contentions of fact and law in support of plaintiff's position.

(As amended July 23, 1993, eff. July 23, 1993.)

T28F1P1.EPS

T28F1P2.EPS

T28F1P3.EPS

T28F1A.EPS

(Added Oct. 5, 1994, eff. Jan. 1, 1995; amended Nov. 14, 1997, eff. Jan. 1, 1998.)

PRACTICE COMMENT

The waiver of service provision under Rule 4(d) does not apply to the United States government. Practitioners also should be aware that failure to waive service in the appropriate circumstances may result in assessment of the costs of service of a summons and complaint.

T28F1B.EPS

T28F2P1.EPS

T28F2P2.EPS

T28F3P1.EPS

T28F3P2.EPS

T28F4.EPS

T28F5.EPS

T28F6.EPS

T28F7P1.EPS

T28F7P2.EPS

T28F8P1.EPS

T28F8P2.EPS

T28F9P1.EPS

T28F9P2.EPS

T28F9P3.EPS

T28F9P4.EPS

T28F9P5.EPS

T28F9P6.EPS

28F10P1.EPS

28F10P2.EPS

(As amended Nov. 29, 1995, eff. Jan. 1, 1996; Mar. 25, 1998, eff. July 1, 1998.)

T28F11.EPS

T28F12.EPS

T28F13P1.EPS

T28F13P2.EPS

T28F15P1.EPS

T28F15P2.EPS

T28F16.EPS